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REPORT
of the
KENYA LAND COMMISSION
SEPTEMBER, 1933

*Presented by the Secretary of State for the Colonies
to Parliament by Command of His Majesty
May, 1934*



LONDON

PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

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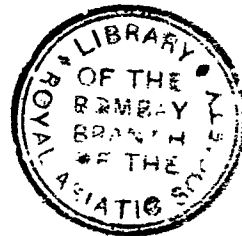
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Personnel of the Commission:

SIR MORRIS CARTER, C.B.E. (*Chairman*),
MR. R. W. HEMSTED, O.B.E.,
CAPT. F. O'B. WILSON, D.S.O.

MR. S. H. FAZAN, O.B.E. (*Secretary*).



Note.—All expenditure in connexion with the Commission, other than the cost of printing this Report, was borne by the Government of Kenya. The cost of printing and publishing this Report is estimated at £1,040.

THE EVIDENCE*

VOLUME I.

Evidence relating to the Kikuyu Province.

VOLUME II.

Evidence relating to the Masai, Ukamba, Northern Frontier, Turkana, Rift Valley and Nzoia Province.

VOLUME III.

Evidence relating to the Nyanza and Coast Provinces; the European Highlands; the working of the Lands Trust Ordinance; Economics and evidence of general application, including the evidence taken in London except that part of it which relates to the Kikuyu Province.

* Non-Parliamentary Publication, Colonial No. 91, May, 1934.

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ERRATA

PAGE 38, LAST LINE.—For “100” read “1000”.

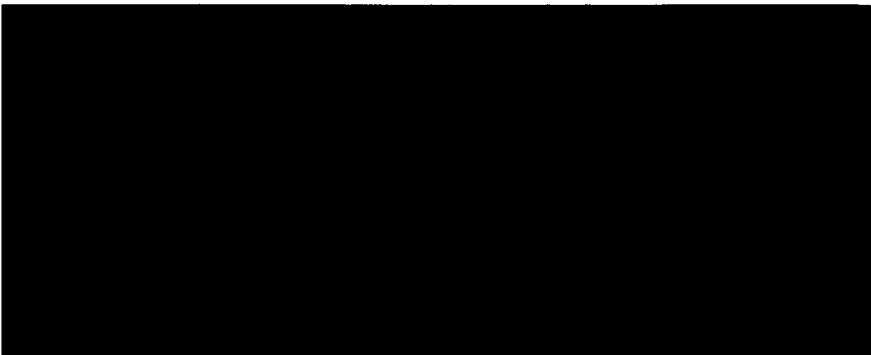
PAGE 39, LINE 4.—For “to” read “of”.

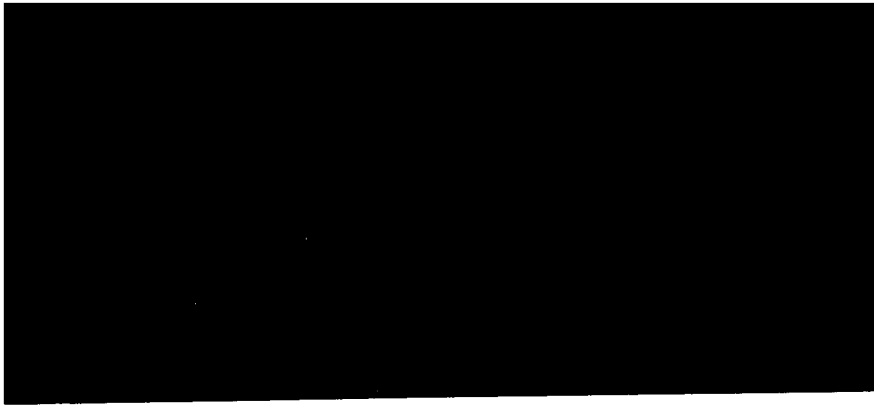
PAGE 188, SECTION 650.—For “5850 square miles” read “9210 square miles”.

PAGE 190, SECTION 656.—For “3730 square miles” read “370 square miles”.

NOTE.—It is regretted that the errors in the above figures, which were due to a misunderstanding, had escaped the notice of the Commissioners until the Report was in print. The two errors, in a sense, cancel each other, since the total remains the same.

PAGE 194, SECTION 672.—For “industrial” read “industrious”.





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REPORT OF THE KENYA LAND COMMISSION

To—

THE RT.-HON. MAJOR SIR PHILIP CUNLIFFE-LISTER,
P.O., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES.

SIR,

We, the undersigned Commissioners, have the honour to submit herewith our Report.

Introduction

1. We were appointed by you in April, 1932, to consider and report upon certain land problems in the Colony of Kenya. We were also appointed by His Excellency the Governor under the Commissions of Inquiry Ordinance, in order that we might be in a position to take evidence on oath in Kenya, our appointment being published in the Official Gazette of the Colony under Government Notice No. 418 of 11th June, 1932.

Appointment
and Terms of
Reference.

2. The terms of our reference are as set out here below :—

(1) To consider the needs of the native population, present and prospective, with respect to land, whether to be held on tribal or on individual tenure.

(2) To consider the desirability and practicability of setting aside further areas of land for the present or future occupancy of—

(a) communities, bodies or individual natives of recognized tribes; and

(b) detribalized natives, that is, natives who belong to no tribe or who have severed connexion with the tribe to which they once belonged.

(3) To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the adequate settlement of such claims whether by legislation or otherwise.

INTRODUCTION

(4) To examine claims asserted by natives over land not yet alienated and to make recommendations for the adequate settlement of such claims.

(5) To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance (Chapter 140 of the Revised Edition), and whether better means could be adopted for dealing with such rights in respect of—

(a) land already alienated; and

(b) land alienated in the future.

(6) To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

(7) To review the working of the Native Lands Trust Ordinance, 1930, and to consider how any administrative difficulties that may already have arisen can best be met whether by supplemental legislation or otherwise without involving any departure from the principles of the said Ordinance.

Places at which
Evidence was
heard.

3. In order that we might have the advantage of receiving the testimony of retired civil servants and other persons now resident in England, whose experience of Kenya is of long standing, it was arranged, with the concurrence of the other Commissioners, that the Chairman should hear evidence in London before embarking for Kenya. This evidence was taken by him in June, 1932.

4. We assembled in Nairobi on 2nd August, 1932, and spent the next three-and-a-half months in visiting the provinces in turn. This was done with the double purpose of enabling witnesses resident in the provinces to appear before us without the inconvenience of coming to Nairobi, and also of affording us an opportunity of studying some of the local problems on the spot. Announcements in the Official Gazette and in local newspapers gave to the public notification of our sessions at various centres and of our desire to obtain evidence. The number of places at which we sat to hear evidence in the course of our tour was forty-two.

5. From the 23rd November until the end of February we were principally employed in hearing evidence from natives and non-natives in Nairobi, but during this period we also visited the Coast Province, the Leroki Plateau, and various parts of Kikuyu. The month of March was spent principally in hearing the evidence of Heads of Government Departments, and the ensuing three months were devoted to the preparation of the report and in taking supplementary evidence.

INTRODUCTION

6. Altogether 736 witnesses have been heard and 507 memoranda have been presented. It may be of interest to record that 487 of the witnesses examined have been natives and the remainder non-natives. Of the latter 94 were Government officials.

The number of
Witnesses
examined.

Not included in the above list are 212 statements which have been recorded by magistrates and forwarded to us. The great majority of these statements are by natives.

There have also been some 400 letters or other documents received from Kikuyu natives, dealing with private claims by families or groups.

It will therefore be apparent that there has been no lack of material on which to work.

7. Most of the native evidence was taken in *barazas* or public assemblies, and it has always been our practice to ask the assembled natives before the end of the *baraza* whether they agree with the statements made. In this way we have been able to judge to what extent the opinions expressed are representative of the general feeling of the tribe.

8. In all cases the recorded statements of witnesses and the memoranda submitted by them (or accurate copies) have been placed on the original record of evidence. In most cases they also appear in the printed version, exceptions being occasionally made for the following reasons:—

- (a) If the memorandum is a printed document available to be read elsewhere.
- (b) If the memorandum is, in our judgment, too voluminous to be printed, regard being had to its value in connexion with our inquiry.
- (c) If the witness has desired that the evidence be not published, on the ground that its publication would be against the public policy or interest.
- (d) In the case of the Secretary's *précis*, prepared before the arrival of the Commission, only a summary has been printed, because the original contains extracts from proceedings in the Executive Council and other confidential matter, which could not be published without reference to the Secretary of State.

9. A further exception has been made in the case of claims by Kikuyu families or groups. These, taken collectively, are far too voluminous to be printed. But we have authorized the publication of a summary which appears at pp. 258 to 375 of the printed evidence.

INTRODUCTION

10. The evidence of all witnesses who have appeared before the Commission in Kenya has been taken on oath or affirmation, but the evidence taken in London was not, since the Chairman had no authority to administer oaths in England. It has been our practice to send the record of his evidence to each witness for correction, and in the case of native witnesses the record has been sent to the District Commissioner to be checked over by him with the natives and any necessary corrections have been made.

11. We have also taken cognizance of memoranda submitted by persons who have not been able to appear before us, even though such memoranda have not in all cases been affirmed on oath; and we have availed ourselves of material contained in Government files, printed books, maps and other documents. Our own experience of the Colony is considerable, and we have regarded it as legitimate, and indeed inevitable, that we should use it as a background against which to test the rival merits of conflicting statements and claims.

A principle
underlying our
Recommendations.

12. After reaching our conclusions on the evidence, we have endeavoured to make recommendations which offer a practical solution of the various problems in the light of facts as they exist to-day.

Arrangement
of the Report.

13. The report is divided into three parts. The first part is devoted to the Kikuyu Province; the second to the other provinces, and in the third part we attempt a review of the native land problems as a whole. A chapter on the definition of the Highlands is also included in this part.

14. The above arrangement, which sets the Kikuyu Province in one part and all the other provinces in another part, may suggest that we attach more importance to the needs of the Kikuyu in respect of land than to the needs of other tribes. This is not the case, but the exceptional degree of individualism to which this tribe has attained in its conceptions of landholding, in conjunction with other considerations which we shall explain, have rendered the just settlement of the Kikuyu land problems especially intricate, and have demanded examination in greater detail than has been necessary for other tribes.

15. In our examination of provinces we have for the most part adopted an arrangement by which we review separately the claims asserted on historical grounds and those which rest on grounds of present or future needs. In reaching our conclusions regarding the several tribes we have, in each case, taken into account the state of advancement of the tribe, its agricultural and pastoral practice and system of land tenure. In order that the

INTRODUCTION

reasons for our recommendations may be appreciated we have included a short description of the economic condition of each tribe in these respects. We also include sections dealing with exchanges, adjustments, and special cases.

16. In the comprehensive survey in the final part of our Report we enlarge the scope of our inquiry and consider how the tribal lands may best be safeguarded in the interest of the occupant tribes; how they may be conserved against misuse; how they may be extended if need should arise; how protection may best be given to the private rights of individuals, families, or groups; and, finally, what provision should be made for natives who have emerged from a tribal state and wish to hold land on some more individual form of tenure than is possible to them in the reserves.

17. A small point has to be mentioned in regard to the spelling of native names. There are some names which are commonly spelt in a variety of different ways: e.g., Limuru, Limoru, and Lamuru; Kiambu and Kyambu; Dagoretti and Dagoreti. In these cases we have adopted a uniform spelling, even when quoting from memoranda of witnesses who may have spelt the word in a different way. The same consideration applies to native names stated in the plural, and we find variously the Akamba, the Wakamba, the Awakamba and the Kamba. In these cases we have followed the practice of giving the root word simply: the Kamba, the Dorobo, the Masai, etc., but we have made an exception in the case of the word *githaka*, where we show *githaka* in the singular and *ithaka* in the plural. There are a few cases where a wrong spelling has become hallowed by usage, e.g., Kapiti, which derives its name from the Kaputiei section of the Masai. We use the first spelling in reference to the place and the latter in reference to the people. These small points ought, perhaps, to be mentioned.

Spelling of
Native Names.

18. We have been greatly assisted in our task by the readiness with which witnesses of all races have come forward to give evidence, and the careful memoranda which have been submitted by members of the public and by Government departments. We are also most grateful for the help which has been afforded us by the officers of the Land and Survey Departments who have been indefatigable in supplying all the information for which we have asked. In this connexion we expressly desire to mention Mr. C. E. Mortimer, of the Land Department, and Mr. F. J. Gosden and Mr. C. G. Fannin, of the Survey Department. We are also most grateful to the Surveyor General for arranging that the services of his staff should be available to us for the preparation of maps and plans, and to Mr. F. W. Knightly, the Government Printer, and his staff, for fulfilling so ably and willingly our somewhat exacting requirements.

Acknowledg-
ment.

19. It is a source of regret to us that, even in so long a report, we have not been able to do full justice to all the wealth of material that has been placed at our command, and we wish to invite the particular attention of Government to the many able and most useful memoranda which stand in evidence.

The précis which he prepared prior to our assembling were of the greatest assistance in helping us to obtain a grasp of the problems confronting us, and his work in connection with the drafting of the report has been invaluable.

We also wish to express gratitude to Mr. J. F. G. Troughton for his able services during the four months in which he acted as Assistant Secretary. He displayed great energy and capability, and the work which he did in collating material for the preparation of the second part of the report was most valuable.

21. In conclusion we wish to express our gratitude for the most generous hospitality which we have received on all sides.

Classification of Lands

(*A preliminary statement.*)

22. There is a preliminary point which we wish to make clear. In the course of the chapters which follow we shall sometimes have occasion to recommend that additions be made to native reserves. In such cases we shall draw a distinction between land which we recommend to be added in satisfaction of a claim of right based on historical grounds or on present and continuous use, and land which we recommend to be added to satisfy economic needs.

For ease of reference we shall allude to the first class as A, and the second as B, and in the third part of our Report we shall make clear the safeguards and special conditions to which, in our opinion, the grants under each class ought to be subject.

23. Class B we shall divide into B1 and B2, the former being land which we recommend to be added because the tribe appears likely to have permanent need of it, and the latter being land which we recommend to be added to fulfil a need which appears to be of a more temporary character. The nature of the security which we recommend to be provided in each case will be made clear in Part III.

24. There is a third class of land in which we shall recommend special facilities for natives, but not on tribal lines. To this class of land we refer as Class C, and we shall recommend that the normal method of tenure shall be by lease.

25. Occasionally a reference will be found to "Class D." This is land in which we recommend that no special privilege of race should obtain in respect either of initial grants or transfers. Class D would in effect be all the land in the country which is neither existing native reserve nor A, B or C, nor European highlands, nor an area, such as Turkana, in which certain native tribes have special, though not exclusive rights.

26. Although we shall find it convenient, for the purposes of the Report, to refer to the various categories here described as A, B, C or D, as the case may be, we shall, towards the end of our Report, propose more suitable designations for them.

PART I

THE KIKUYU PROVINCE

INTRODUCTION.

27. In the first fifteen chapters of this part we shall deal with the land problems of the three districts of Kikuyu proper, namely. South Nyeri, Fort Hall and Kiambu. Whenever such expressions as Kikuyuland, the Kikuyu country, or the Kikuyu Reserve or Reserves occur in these chapters, they should be understood to relate to the Kikuyu properly so called, inclusive of the Ndia and Kichugu sections, but excluding the Embu and the Meru.

28. In the sixteenth chapter we shall deal with the land problems of the Embu and Meru tribes, and in the seventeenth and final chapter of this Part we shall consider certain problems in connexion with the Nairobi Township and Commonage, since Nairobi is officially part of the Kikuyu Province.

29. The native land problems of the North Nyeri District bear relation to the Northern Frontier rather than to the Kikuyu Province, and will therefore be held over for discussion in Part II.

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CHAPTER I.

PRELIMINARY OBSERVATIONS ON THE PRINCIPLES AND GOVERNING FACTORS IN THE MATTER OF THE KIKUYU CLAIMS.

30. We think that it would be well at the outset to state clearly the principles and essential factors which in our opinion are of importance in connexion with the Kikuyu claims.

(1) If a tribe has suffered loss through alienation of part of its territory, it is in equity entitled to be compensated. But the compensation might properly be assessed in accordance with the extent of the true loss sustained, that is to say, according to the degree of use which was made of the land and the purpose which it served, whether at the time of the alienation or as a reasonable reservation for future expansion. We cannot accept the principle that, because a tribe has lost land, it is necessarily and of right entitled to receive equal or equivalent land elsewhere, irrespectively of these considerations.

Argument.—It is a proper function of Government to secure the development of land to the best advantage. While private rights are recognized, a power of intervention is commonly preserved to the Crown by means of land acquisition acts and similar legislation, in order that the power of Government to secure a proper development should not be impaired.

If therefore the possession of large undeveloped tracts of land by any tribe, person or class is prejudicial to the welfare and development of a country, it would be a proper exercise of the function of Government, when it has armed itself with the necessary powers, to intervene and adjust the matter. The just compensation is for the extent of the true loss sustained, and it would defeat the whole purpose of the action if it were held that for every piece of land taken an equal piece must be added.

That the Government in this country may sometimes have taken action before it had provided itself with full legal cover does not affect the essential equity of the case as between the Crown and the native, which is simply a matter of assessing an equivalent compensation for the extent of the true loss sustained.

(2) The land ought to be accounted fully used if the population, regard being had to the degree of its skill and its mode of life, was living at or beyond the optimum density.

• KIKUYU PROVINCE

PART I—CHAPTER I]

CERTAIN GUIDING PRINCIPLES

Where such conditions prevail, the tribe is entitled to be compensated up to the full value of any of its land which is taken. But the greater the margin by which the population falls short of this requirement, the greater is the justification of Government for regarding unoccupied land as waste land of which it had the right and duty to make disposal in the way which it deemed best for the country at large. In such case compensation might justly be assessed on the extent of the useful purposes which the land served and not on the extent of the land. If the population were very sparse it might well be held that considerable areas could be alienated without causing any loss beyond a certain loss of amenities.

Argument.—It is clear that on occasion Governments have acted on the principle that the basis of compensation should be the value which the land possessed for the person from whom it was taken, regard being had to the purpose for which he was using it. We may cite (though we do not wish to be taken as expressing an opinion on the equity of such action in the case of private landowners) the procedure under the Congested District Acts in Scotland and Ireland by which small holdings were carved from the moorlands of large landowners on nominal compensation, on the ground that the land was in excess of reasonable requirements and that all that had occurred was a trifling loss of amenities.

Although these two principles, if we had adhered to them, would have provided justification for giving the Kikuyu substantially less than an equivalent area for the land lost, yet in the special conditions which resulted from the alienations and which are described below, we determined that it would be more in accordance with the dictates of the position and the interests of the Kikuyu that we should agree to settle their claims of right by adding to the reserve an area equivalent to the total extent of their losses.

(3) Broadly regarded, the extent of native occupation in the Fort Hall District both before and after the famine of 1898-99 must be held to have been equal to or possibly beyond the requirements of optimum-density within the area which we shall describe as unequivocal Kikuyu territory. In the Kiambu district, and possibly also in the Nyeri district, the extent of native occupation was below these requirements at the time when the alienations took place. But the amount of land required for reasonable expansion, and the far-reaching effect of European settlement in drawing population towards the main centres were hardly to be foreseen, and in our opinion

KIKUYU PROVINCE •

PART I—CHAPTER I]

CERTAIN GUIDING PRINCIPLES

adequate provision was not made. We therefore think it equitable that a claim as of right should be allowed in respect of the land lost in these two districts, which was, however, in a great measure discharged when the Ndeiya and Mwea districts were made available for occupation by the Kikuyu.

Argument.—Section 67 in Chapter II shows the population densities as they stood in 1902 as nearly as can be ascertained. Compared with the area which we have found to have been unequivocal Kikuyu territory at the time, the density in the Kikuyu country, over all, appears to have been in the neighbourhood of 250 to the square mile, and in the Kiambu district about 150 to the square mile, though in the areas which were alienated it was less than half that density (*see* section 318). Mr. Ainsworth, the Provincial Commissioner, Ukamba, wrote in that year a letter to the Acting Commissioner dated 22nd September, 1902 :—

“In travelling through the Kikuyu country south of the Thika, the main point that strikes the traveller is the sparsity of population and the large areas of good land uncultivated. It is very evident indeed that there is ample room for very extensive settlement in the country without in any way unduly encroaching on native occupation.”

(4) The alienations in the Kiambu district increased the density of the native population, not only by restricting the area, but also in other ways. They were part of the policy of white settlement which resulted in the establishment of a considerable town and market at Nairobi. Better transport, better health conditions and better markets have had a great effect on the native population :—

- (a) Instead of growing for their food requirements only, the natives now grow for the market, a procedure which requires more industry and more land, except in so far as there has been an improvement in their skill in husbandry.
- (b) The natural increase of the population has not been kept in check by the periodic visitations of disease and famine to which it was formerly subject.
- (c) The money to be made either by working for settlers or by selling produce in Nairobi markets has attracted large numbers of Kikuyu from the other districts into Kiambu district.

• KIKUYU PROVINCE

PART I—CHAPTER I]

CERTAIN GUIDING PRINCIPLES

While it would be ridiculous for the Kikuyu to make a grievance out of circumstances from which they have benefited so greatly, nevertheless a great increase in the population and its land requirements has taken place as a consequence, and problems of local congestion are arising which threaten to become general and perhaps acute in the next generation. Government recognizes an obligation to provide for the needs of the natives, and we have to deal with this problem under the first term of reference.

(5) While block additions to the reserve are not the only or necessarily the best way of dealing with congestion problems, nevertheless, if land is available, we regard it as expedient, in order to provide a reasonable reservation for expansion as mentioned in paragraph (3) above, and to convince the Kikuyu of Government's desire to discharge all moral obligations which can possibly be considered to exist towards them, that a "profit and loss" account should be made setting off the areas of "unequivocal Kikuyu territory" which have been taken away against the additional areas which have been granted, and that block additions should be made to the reserve equivalent to the balance of the Kikuyu losses.

(6) Although we have drawn the boundary of unequivocal Kikuyu territory in such a way as to include much debatable ground, we shall have to consider isolated cases of villages built by individual Kikuyu families who had ventured beyond the confines of the tribal territory and have to be regarded as disconnected outposts. In some cases, as, for instance, in the Lari area, account has been taken of such isolated occupation in reaching our assessment, but it has naturally not been possible to include every village in our reckoning, and more especially on the south-eastern border there were several small clearings in the bush for which we have not made specific allowance. We do not consider it practicable to do so, but we recommend that, as far as a settlement with the tribe at large is concerned, the question should be merged in the wider problem with which we deal under the first term of reference, namely the duty of making adequate provision for future needs. These clearings in the forest were the method by which the tribe expanded and, if we can offer other means of expansion, the tribe will be adequately compensated in this respect.

(7) A settlement on tribal lines may not be enough. The interests of particular groups or families who have lost land have also to be considered. Chapters VII to X are devoted to this aspect of the Kikuyu claims and we have made such proposals as we consider to be just and practicable at this date.

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CERTAIN GUIDING PRINCIPLES

We believe that the settlement proposed is just both to the tribe and to the individuals who compose it. In order to satisfy ourselves on this point we have made an examination of the general nature of the private claims and the basis on which they rest, but we are fully persuaded that we are not required under our terms of reference to carry our inquiries beyond this necessary point, and we have not done so.

31. It will now be relevant to determine what areas should be regarded as having been "unequivocal Kikuyu territory." The next four chapters will be devoted to determining the position as it existed when the Protectorate was declared, but we shall not regard absolutely everything which has been added since that date as a gift by Government. A traditional method of extending territory existed by first clearing and use, and we shall allow that certain land was admissibly acquired in that manner, except that in certain areas, where officers of the Forest Department were actively employed after the formation of the Department in 1902, we shall not recognize such acquisition after that date, nor shall we recognize it elsewhere after definite areas were demarcated as forest reserve.



CHAPTER II.

CONDITIONS OBTAINING IN THE KIKUYU COUNTRY AND ON ITS BORDERS AT THE TIME WHEN THE PROTECTORATE WAS DECLARED.

*(Together with some incidental notes on subsequent developments
until 1902.)*

**The Existence
of a Forest
Belt surround-
ing the Kikuyu
country.**

32. All early accounts of the Kikuyu territory agree in stating that it was surrounded by a belt of forest of varying width which served to protect the tribe against its enemies. They further agree that the Kikuyu did not venture outside this belt to build or cultivate or graze their cattle beyond it until the Masai power began seriously to wane, owing to internecine war and the tremendous losses of their cattle by disease and until the Protectorate had been declared. The land may therefore be said, broadly speaking, to have had two frontiers—the outside and the inside of the forest belt, and it will probably be a fair distinction to regard all the land inside the belt as having been at that time “unequivocal Kikuyu territory” and the belt itself as having been “partially or intermittently used by the Kikuyu.”

33. A series of extracts from published works will be found in Appendix No. 1, section (a). A perusal of these extracts shows quite clearly that the country then occupied by the Kikuyu was in fact surrounded by such a belt of forest. Before discussing its exact position, it will be well to dispose of three questions which arise concerning it, namely:—

(1) Were the Masai and other tribes entirely excluded from all use of the land surrounded by the forest belt?

(2) Were the Kikuyu entirely excluded from the use of the land outside it?

(3) Is the belt itself to be regarded as Kikuyu country? To what extent could the Kikuyu make free and unfettered use of it?

**Extent of
Penetration or
occupation by
Masai or other
Tribes in the
area surround-
ed by the
Forest Belt.**

34. In this connection we have to consider: (a) Dorobo; (b) Masai; and (c) Kamba. The evidence given before the Kikuyu Land Tenure Committee as well as the evidence given before this Commission makes it clear that very few, if any, Dorobo were living in the Fort Hall or Nyeri Districts at this time. But they inhabited the Kiambu District before the arrival of the Kikuyu, who progressively superseded them and became masters of the land by a series of transactions in which the payment of goats sometimes played a part. Some of these “sales” appear to have taken place as much as eighty years ago, but many others are of

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CONDITIONS FROM 1895 TO 1902

more recent date and since the Protectorate was declared. There has also been evidence that some of the earlier payments to the Dorobo, made before that date, were supplemented by a later payment made afterwards. The position in 1895 therefore was that the Kikuyu were not in all cases the exclusive possessors of the soil even in their own country. There were undoubtedly many Dorobo who retained rights of various kinds.

35. We now turn to the Masai. The account given by Von Hohnel (Teleki, p. 288, *et seq.*) makes it clear that they regarded an entry into the Kikuyu country as a very formidable proposition. Thomson's book, "Through Masailand", p. 308, period 1883. shows clearly that the Masai never succeeded in their attempts at penetration into the part of the forest which was at that time occupied by the Kikuyu. Major MacDonald, R.E. ("Soldiering and Surveying in British East Africa", p. 111) points out that Captain Lugard in 1891 decided against making his station at Fort Smith because the Masai "could hardly venture to visit a station in the midst of their hereditary enemies." Several witnesses have given personal testimony to the same effect.

36. While there is no serious evidence against the proposition that the Kikuyu were reasonably secure behind their forest boundaries and maintained themselves aloof from the Masai, there are some exceptional cases alleged which require notice. Statements have been made in evidence that the Masai :—

(1) Took their cattle to the salt-lick at the Thathini Swamp, which was on the inner edge of the forest belt.

(2) Drove their cattle from the Kapiti Plains to the Kinangop across what is now the Kikuyu country.

(3) Built *manyattas*, of which remains exist on Mr. MacLellan Wilson's farm which is inside the forest belt, and on the Church of Scotland Mission land at Kikuyu and elsewhere.

37. The first of these statements rests on the evidence of Mr. MacLellan Wilson, which is supported by the evidence of Swahili and Masai witnesses; but correspondence preserved on Kiambu File No. 346/21/13 shows that Mr. Isaac, Provincial Commissioner, inquired into this matter in 1913, and that an old Masai who had lived near Thathini admitted that it was a Kikuyu salt-lick, never used by the Masai except occasionally in a raid (*see* Appendix 1, section (h)). The second statement is based on the memorandum of Colonel John Ainsworth, there being some supporting evidence by a Masai named Sayet Ole Nagila, and some evidence of a somewhat contrary effect by Mr. Knapp and Canon Leakey. The evidence

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regarding the remains of Masai *manyattas* in Kikuyu country is by Mr. MacLellan Wilson, Dr. Arthur, Mr. Block, Brother Solanus Zipper, Mr. McQueen and others.

38. We believe that Mr. MacLellan Wilson's views are correct, to the extent that Thathini was formerly a salt-lick used by the Masai; but we are of opinion that it had been abandoned by them at the time of the cattle plagues and their inter-tribal wars, and the Kikuyu thereafter had the use of it.

39. The track mentioned by Colonel Ainsworth was not in use by the Masai when he saw it in 1898. He regarded it as a very old track, and had been told that it had not been used for many years before Lenana became Laibon "because after" the Kikuyu began to move south of the Chania there was trouble with the Kikuyu." Since Thomson in 1884 recorded the southern limit of the Kikuyu as being in the vicinity of Ngongo Bagas, it is clear that if the Kikuyu had not yet crossed the Chania when that track was made, it must have been a very old track indeed.

40. Mr. Knapp refers to it in his evidence and states that an inquiry was held in Nairobi concerning it with a view to determining whether this country had ever been used by the Masai. The Kikuyu story advanced at the inquiry, according to Mr. Knapp, was that the track was really a Kikuyu track but that on one occasion a party of Masai *morán* tried to force their way through with cattle to the Kinangop and were attacked by the Kikuyu and exterminated and that the Kikuyu ever afterwards called it the Masai track in derision. This explanation certainly not does not square with Colonel Ainsworth's account of an exceptionally deep track, which caused him to ask the question. The best view of the two conflicting accounts is probably that very many years ago the Masai used the track, but that on one occasion after the Kikuyu had established themselves south of the Chania, a party of Masai was exterminated by them, and the Masai never attempted to pass that way again. But as the date is given as "many years before Lenana became Laibon" it is clear that the use of the track had already been abandoned by the Masai before the dates with which the present inquiry is concerned.

41. As to the possible presence of occasional *manyattas* inside the Kikuyu country, an explanation has been offered by some witnesses that sometimes there was intermarriage and the relations of the bride sometimes followed her; or more generally, that when peace prevailed, settlement by Masai in Kikuyu was allowed on sufferance. But Dr. Boedeker regards these cases as not dating before 1894, when Mr. Hall established better relations between

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the Kikuyu and the Masai and gave some of the Kaputiei Masai leave to settle in the district. This would appear to accord best with the records of the early explorers. Von Hohnel does not mention that any Masai were found living in Kikuyuland, but there is evidence to show that at the time of the rinderpest about 1889 the Kaputiei Masai came to the borders of Kikuyu country, and both Kikuyu and Masai witnesses state that after the defeat of of the Kaputiei section of the Masai by the Loita Masai, a number of the former sought refuge in Kikuyu country and established villages there. This may account for the belief of several responsible witnesses that much of the land which we consider to have been unequivocal Kikuyu country was occupied by the Masai.

42. The conclusion therefore seems to be warranted that in the period which we are considering the Masai did not establish themselves anywhere in Kikuyuland inside the protective belt of forests, except as refugees. They raided the country sometimes, and were raided in turn. Sometimes they helped one section of the Kikuyu to raid another (John Boyes, p. 94). Add to this that there was a reciprocal arrangement by which the Masai women used to enter Kikuyu country to trade and vice versa, and we have stated the total extent of the effective use which the Masai had of the Kikuyu country enclosed by the forest belt about 1895. About the date when the Masai power had declined and some of the elements had made friends with the Kikuyu and settled among them, there was more reciprocity and Masai cattle were sometimes seen grazing in Kikuyu country.

43. Turning to the Kamba we find several references in evidence to mutual raids between the Kikuyu and the Kamba, but the reference is to the period after the Masai power had begun to decline. Nevertheless it cannot be held that even before this the Kikuyu were entirely immune from Kamba raids. In a passage which will be cited in another connexion below (section 188) Von Hohnel observes that when he and Count Teleki were a little south of the Thika and to the west of the boundary wood they went through an area which the Kikuyu had left uninhabited for fear of Kamba "slave raids."

44. Subject to the limitations described above the land surrounded by the forest belt may be held to be "unequivocal Kikuyu territory." The degree to which it was effectively occupied is an issue which we hold over for later discussion.

45. We now turn to the second question: "Were the Kikuyu entirely excluded from the use of any land beyond the forest belt?" Extracts from books will be found in section (a) of Appendix No. 1 which show that the Kikuyu can have made very little use of the land outside the forest prior to the decline of the Masai power,

Extent of
Kikuyu pene-
tration beyond
the Forest
Belt.

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though it would seem from Lord Lugard's "Rise of our East African Empire" (p. 335) that they sometimes set fire to the Masai grazing in order to prevent the Masai using it, but there is no evidence to support the Kikuyu contention that they themselves used to go out of the forest on to the plains to graze their cattle. The only European witnesses who can speak of that period are Colonel Ainsworth and Mr. C. W. Hobley, and their evidence shows conclusively that up till 1894 practically no cultivation and no natives other than the Masai were seen outside the forest belt in the general neighbourhood of the site where Nairobi now stands. The relevant extracts from their evidence will be found in section (b) of the Appendix. But shortly after this period Kikuyu villages began to appear. (*See* evidence, pp. 653, 718, 742, 863 and 873, by Mr. Sandbach Baker, Mr. McQueen, Mr. T. A. Wood, Rev. Canon Leahey and Rev. Canon Burns.)

46. The further recorded evidence suggests, however, that the Kikuyu were slow to take advantage of the absence of the Masai from this plain. The extracts from evidence given in section (g) and (h) of the Appendix prove that there was no permanent occupation of these plains either by the Kikuyu or by the Kamba at this time. Both Mr. Lane and Mr. Tate refer to constant raiding between the Kikuyu and the Kamba, which may explain the reason.

47. The best view on the evidence appears to be that, before the decline of the Masai power had become evident, the Kikuyu did not venture on to these plains at all. By 1898 their huts began to be seen on the very edge of the forest belt near Muthaiga and perhaps elsewhere, but for several years afterwards the use which they made of the plains for grazing or other purposes was so slight that it escaped the notice of travellers, except that possibly they crossed it for the purpose of raiding the Kamba.

48. A similar situation perhaps existed on the plains to the north of the Kikuyu of Nyeri District. Compare the evidence of Major Orde Brown (Evidence pp. 383 and 384).

"Of the plain between Kiambu and Fort Hall up to Nyeri I believe the Kikuyu were very largely denied occupation by the Masai . . . In my opinion, what they claim and what they really occupied are two very different things."

49. While we find nothing in the evidence or in records to show that natives of the Kiambu or Fort Hall districts ever penetrated to any extent beyond the forest belt within the period with which we are concerned, it seems that on the northern frontier of the Nyeri Kikuyu more intercourse prevailed and certain Kikuyu families established friendly relations with the Masai. The outstanding case seems to be that of Wangombe, Headman Nderi's

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father, whom Mr. John Boyes regarded as being "one of the three ruling chiefs at that time" (p. 143 of his book) and "by far the biggest and most influential of the three." The position of this village was close to Niarā Hill on the borders of the forest reserve in what is now Chief Mdirigo's Location, and it is so shown in the map which was made about 1898 to illustrate Sir Alfred Mackinder's journey. It is Map Sheet A 37/B; a copy has been filed in Volume I of the original record of the evidence.

50. Nevertheless, it is not to be supposed that dread of the Masai did not operate in the Nyeri District as elsewhere to keep the Kikuyu within bounds. In Nyeri Native Tribunal Revision Case 23/29, which was a dispute about a *githaka* close by Nyeri Hill, but inside the gazetted Kikuyu Reserve, the defendant stated :—

"Before the Government came, all that land was bush and nobody went there because of lions and elephants and the Masai. When my father went in, although he was not the first man who went into the bush, nobody else had established himself in that part and no *ithaka* had been fixed."

51. Before leaving the question of the Kikuyu claim to have been in occupation of land outside the forest belt, there is a further aspect of the matter to which reference must be made. The Southern Kikuyu support their claim to the land not only on the ground of occupation, but also on the ground of purchase of land by individual Kikuyu groups or families. They claim that some of this land is situated beyond the forest belt and that the families concerned bought it partly for their present use and partly as a provision for future expansion. We deal with the claim in Chapter VII, in which we review the whole question of the alleged Dorobo land sales.

52. We now come to the third question : "Is the forest belt itself to be regarded as Kikuyu country? To what extent could the Kikuyu make free and unfettered use of it?"

Extent of
Kikuyu
Utilization of
the actual
Forest Belt.

The first part of the question is perhaps not very important since there were no definite frontiers, but, for what it is worth, there seems to be a consensus of opinion among the earlier authorities that "Kikuyuland" included the protective belt of forest. That is not to say that it included the whole of the Aberdare Forest or the West Kenya Forest, but that it included so much of the surrounding forest as was used by the Kikuyu for their protection.

53. But the more important point is whether the Kikuyu had the exclusive and unrestricted use of this forest and what were the uses to which they could put it.

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They had not the exclusive use of it. The Dorobo also were there, at least in the parts bordering on the Kiambu District. They hunted there and, if we believe Kikuyu accounts, were the original owners, and still owned large unsold portions of it until a comparatively recent date. The Masai dispute this. According to them there are Kikuyu Dorobo who are in reality Kikuyu who have taken to hunting, and Masai Dorobo who are true Dorobo and serfs of the Masai who would not have allowed them to dispose of it. They admit that the Dorobo may have disposed of it secretly after the Masai power had declined.

54. We shall review the evidence on this very contentious subject in a later chapter. Two points only need be stated here :—

- (a) It is said by the Kikuyu that when Kinanjui was "Paramount" Chief, a secondary payment at a date well after 1900 was made to the Dorobo to complete the purchases and make them final. If this is true, it constitutes an admission that up to that date the purchases were not final.
- (b) The Dorobo claim that there are large areas in the forest and some areas in the Kikuyu Reserve itself which have never been sold yet and are still theirs.

55. That is one of the respects in which the Kikuyu had not an exclusive use of the forest. The other is in respect of the Masai. The nervousness created by the Masai raids is well illustrated in the following description by Von Hohnel :—

Page 289 (At Ngongo Bagas).—"We had . . . no need to be anxious about provisions. Even large caravans such as ours could easily in normal seasons buy food for several months of the Kikuyu in a very short time. There are no markets exactly like those in other parts of Africa, as the Kikuyu do not venture out of the forests for fear of the Masai and caravans have to seek them. A well-armed contingent of a travelling party goes into the wood and calls the attention of the natives by firing two or three shots . . . In a few minutes the signal is answered by the appearance of some envoys, a time and spot are fixed on for the holding of a market and in due course the traders make their way to the rendezvous soon to be joined by hundreds of men and women laden with the superfluous produce of their fields, which they are very glad to dispose of. All now goes merrily and in a few minutes piles of provisions are exchanged for strings of beads, but the slightest misunderstanding, an unmeaning and generally quite groundless cry of terror from either side is enough to cause all the natives to flee wildly away . . ." (Von Hohnel then goes

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on to describe how an old Masai woman was used as an intermediary and a market was fixed on the banks of a stream to which many women, but only four old men brought food for sale.)

A passage from "James Hannington" by the Rev. E. C. Dawson, which is quoted in section (a) of the Appendix, also illustrates the extreme nervousness of the Kikuyu in this neighbourhood.

56. Even on the inner edge of the forest belt near Limuru Station the Kikuyu do not seem to have been very sure of themselves. As an example, Mr. S. Morson, referring to the year 1904, mentions in his evidence that certain Kikuyu were unwilling to proceed from Limuru on to Uplands for fear of the Masai.

57. Whether the Masai made any great use of the forest glades for purposes of grazing except in times of drought is perhaps open to doubt, though the evidence of Mr. Patterson states quite definitely that they did graze there to some extent. Thomson (op. cit., p. 310) confirms this. The relevant extracts will be found in section (a) of the Appendix. Some Masai witnesses have stated that the Masai *moran* used to assemble in the forest for holding meat-feasts, and we are satisfied that this is true in spite of some evidence to the contrary. The Masai Elder Lengemogik Ole Nakorde deposed that the forest belt on the southern and eastern border of Kikuyu was Masai country, but that they sold some of it to Dorobo families, some of whom were afterwards adopted by Kikuyu. He represented this to have happened before the white men came.

58. The statement that the forest formed a protective belt round the Kikuyu country possibly contains the implication that it was left by the Kikuyu for that purpose. That can only be partially true. There were perhaps places where it had worn so thin that the Kikuyu could not venture to cut any more for fear of destroying the barrier, and probably that is what Mr. MacGregor Ross meant when he stated in his evidence that it was deliberately left by the Kikuyu. But there were places where the forest was far deeper than the requirements of protection demanded, e.g., on the slopes of the Aberdares, and we may take it as certain that these large tracts were not deliberately left, but the Kikuyu were destroying them as fast as they could. While we may agree that the comparatively narrow fringes of forest on the south and east and possibly the north were occupied by the Kikuyu to a greater extent than they were occupied by the Dorobo or Masai and may, in a general sense and within limits, be called Kikuyu country, it cannot in any sense be held that the remoter parts of the forest on the Aberdares had anything to do with the Kikuyu. There is no

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likelihood that they made any use of them at all. That they used to graze their goats "a good way in" is admitted by Mr. A. G. Baker in his evidence, but he also states that the glades which occur on the Aberdares are infrequent and generally the result of human destruction.

59. The present gazetted boundary of the Aberdares is at an average altitude of 7,000 feet, and it could therefore have been of no use to the Kikuyu in those days for cultivation. We may here quote from a letter written by Mr. Hobley in 1913 :—

"From 5,300 feet to about 5,900 feet is the grazing zone where it is not covered by forest, and the wild oat grass *thungari* is particularly valuable for cattle. Above this contour comes the maize and millet zone which extends from about 5,900 feet to 6,700 feet. Above that altitude native cereals will not flourish well, they are liable to frost and are generally dwarfed; the only grain the Kikuyu grow above that altitude is a *Pennisetum* called *Kinyoli* or *Kamanga* which is not a profitable grain to grow; above 6,700 feet sweet potatoes even become very small."

60. It is therefore quite unlikely that the Kikuyu made any use at all of parts of the Aberdares which were more remote than two miles from the forest edge as it existed at the time. The conclusions which we suggest as to the position about 1895 is that the forest belt was Kikuyu land only to the extent to which the Kikuyu were making use of it, but that they had not by any means the exclusive or unimpeded use of it; that the land surrounded by the forest belt was exclusively Kikuyu; and that the land external to the forest belt was not Kikuyu at all.

61. It now remains to define the position of the forest belt and generally to determine the Kikuyu boundaries. But first, in order to complete this survey of conditions obtaining in Kikuyu when the Protectorate was declared and to provide preliminary data necessary for the understanding of the chapters which follow, it will be necessary to attempt an examination of the degree of density at which Kikuyu land was inhabited. It will not be possible to give even a rough estimate of the density obtaining when the Protectorate was declared and there is no practical reason for attempting it. We may content ourselves with saying that in all reasonable probability the population in 1895 must have been considerably greater than it was in 1902, because by 1902 it had not yet had time to recover from the mortality caused by the 1898-99 famine. But the significant year is 1902, at which date the policy of alienation of undeveloped land to Europeans may be said to have begun, and we consider that a method of calculation can be found which is sufficiently reliable to present an approximately accurate picture.

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62. It is a strange thing that among all that has been written to defend or to attack the action of Government in respect of the alienation of undeveloped land which was either in or near the Kikuyu territory, there should be no contemporary record of the degree of population-density in the Kikuyu country and apparently no record of any subsequent attempt to estimate what it was. There are records of a few general observations, such, for instance, as that the Kikuyu could be required to "bunch up" and would "bear squeezing", and a statement in a surveyor's map of 1907 that "there is ample room for further settlement should it be found necessary to move more Kikuyu into the reserve." Descriptions of the country show that, while some of it could be described as "one vast garden", there were many parts which still had all the appearance of unbroken forest. From such allusions and from the opinions of witnesses we are able, in spite of the wide divergence of views expressed, to get a general impression, which, however, we have found it useful to correct in the light of deductions drawn from the statistics available for later years.

The Population Density in 1902.

63. We must anticipate the results of our survey of the boundaries which will be found in Chapters III to V and record here that the total area which we find to have been "unequivocal Kikuyu Territory" in 1895 is approximately 1,640 square miles, and that by 1902, before any considerable alienations, it had spread to about 1,778 square miles (*See Note 1 to section 217*).

64. In the memorandum on "The Rate of Population Increase of the Kikuyu Tribe", which stands in the original record of the evidence and which we consider to be as accurate as is obtainable on the data, the total number of Kikuyu married women in 1909, the earliest year of which account is taken, is given as 124,679 for Nyeri, Fort Hall and Kiambu Districts exclusive of what is now the Keruguya sub-District. In the years between 1922 and 1931, in which an estimate for the whole area is included, the Keruguya figures range between 18.2 per cent and 18.8 per cent of the total, the percentage appearing to increase slightly as the years go on. We may perhaps assume without any grave error that it was about 18 per cent in 1909, which would make the total of married women for the three districts 152,084 at that time.

65. In the table showing the total population for all Kikuyu in 1931 married women are found to be 29.4 per cent of the whole and the children 41 per cent. But in 1909 it is probable, for reasons which appear in the memorandum, that the percentage of children was somewhat lower and that of married women somewhat higher, and we may probably set the married women down as 31 per cent of the whole. In that case the total population would have been 490,477 in 1909.

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66. The opinion given in the memorandum and based on such figures as are available is that in the pre-war years the population was increasing in normal years at a rate of about 1.2 per cent yearly. If this opinion is true the population was about 451,562 in 1902, since there is no reason why the years 1902 to 1909 should not be regarded as normal.

67. A comparison with 1931, when presented in tabular form, is interesting :—

<i>Year.</i>	<i>Resident Population.</i>	<i>Area of Territory (square miles).</i>	<i>Density per square mile.</i>
1902 ...	451,562	... 1,778	... 254
1931 ...	489,156	... 1,931	... 253

Note 1.—While in 1902 the number of Kikuyu living outside Kikuyuland was negligible, in 1931 the figure is estimated to have been 110,697.

Note 2.—The figure 1,931 includes the Mwea area (205 square miles), the addition of which to the native reserve has been approved by the Governor in Council, but which has not yet been gazetted as part of the native reserve, although the natives have been allowed to occupy it.

Note 3.—The figure 489,156 is the official estimate for 1932. The figure given in the memorandum on the rate of population-increase in Kikuyu is 493,502. Both of these figures are estimates to the extent that children have been computed on a percentage basis in each case and not by actual count. We offer no opinion as to which is the better estimate but have accepted the official figure.

Note 4.—If the density is taken only over the area of the reserve as gazetted (the Mwea area being excluded) the figure is rendered 283 to the square mile.

The conclusion suggested is that in 1902 Kikuyuland was inhabited in very much the same density as it is now and that, although the population has increased greatly, the method of disposing of the surplus has been by a resort to squatting on alienated lands.

68. There are two reasons why the high order of population-density which obtained in 1902 was not readily apparent. The first is that the Kikuyu did not grow produce for the market extensively at that time, but grew it principally for their own consumption. It has been estimated that, at the time when the Limuru farms were alienated, the average Kikuyu woman had about one acre under cultivation. That would mean that in the Kikuyu country as a whole only one acre in eight was cultivated. At the present day approximately one acre in three is cultivated.

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69. The second reason is that the Kiambu District was much more generally known than the others and it was that district which particularly interested the applicants for land. It was far less thickly populated, both because it was the district into which the Kikuyu had most recently penetrated, and also because the famine of 1898-99, besides causing many deaths, had brought about a stampede of the survivors back to Fort Hall. There is no evidence from which one can estimate with any certitude how many of them had returned by 1902. But, regarded in isolation, the district must have appeared to have enough land for its population for generations to come and a good deal which could reasonably be spared to others. It was perhaps imperfectly realized that it had for many years been used as an expansion area for the more densely populated districts of Fort Hall and Nyeri and that more than its own natural increase of population had to be taken into account.

70. The memorandum shows the total married women from Kiambu District in 1909 as 23,386, which may be interpreted as a total population of 75,439, the women being reckoned as 31 per cent. The rate of natural increase is assumed in the memorandum to be 1.2 per cent, a figure which is extremely problematical, but is not particularly improbable. That would mean that all the various family units which in 1909 made up a population of 75,439 persons were represented in 1902 by a strength of 69,401 persons. They were not all living in the Kiambu District at that time, since a very large proportion of them had taken refuge temporarily in Fort Hall District at the time of the famine and had not yet returned. The Kiambu Native Reserve to-day is just 400 square miles in extent and we have found on the evidence which will be reviewed in the next three chapters that the areas added and the areas taken away so nearly balance each other that the same figure may be taken, for the purpose of the present rough calculation, to be the extent of Kikuyu territory in the Kiambu District in 1902. If the 69,401 persons had all been living in it the density would have been 173 to the square mile.

But so high a figure would be inconsistent with the evidence and we may conclude with certainty that a large proportion of this population was living in the Fort Hall District.

But if the population over all Kikuyu was as dense as 254 to the square mile it follows that, the lower the estimate for Kiambu, the higher must be the estimate for the remainder, and it appears to us unlikely that the density figure for the Fort Hall District over all could have been as much as three hundred to the square mile if the extent of forest or scrub covered land was as great as we have found it to have been, though parts of it were undoubtedly more densely peopled.

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71. After taking these points into consideration and others which will be reviewed in sections 291-321 below, we have formed the opinion on the probabilities of the case that the population-density in the Kiambu Reserve in 1902 was about 150 to the square mile or perhaps rather less, and that in the areas actually alienated it was only some 73 to the square mile.

72. On the basis of calculation which has already been followed this would mean that only 50 acres in a square mile, or roughly one acre in thirteen, were cultivated or fallow land as a general average in the Kiambu District, while in the areas taken for alienation the proportion would be about one acre cultivated (including fallow) in every twenty-nine. It is therefore understandable that there should have appeared to be large tracts of waste lands of which it was felt that the Crown might legitimately dispose. The areas of which the Crown actually did dispose within the boundaries of Kikuyu territory are shown in the coloured map following section 227 to which reference should here be made. The reasons supporting the map will be given in Chapters III to V, while in Chapter VIII an estimate is attempted of the number of persons who were actually inhabiting the land at the time when it was alienated.

CHAPTER III.

THE WESTERN BORDER WHEN THE PROTECTORATE WAS DECLARED.

(*Nyeri to the Kamiti.*)

(*Note.*—The conclusions reached in this chapter are illustrated in the coloured map following Chapter VI, and the argument will be easier to follow if reference is made to it as we proceed.)

73. When Count Teleki made his journey in 1887 the southern edge of the forest belt evidently began several miles south of the present site of Nyeri. He crossed the Gura, which he calls the Bura, on the morning of 3rd October, 1887, after having already : (a) had trouble in collecting his cattle which "had dispersed in every direction"; (b) passed several villages; (c) had a porter murdered and avenged his death. It cannot therefore have been very early in the day when he reached the river and he records that he took an hour to get the safari across. Many natives, outnumbering his safari by fifty to one, had gathered on the ridges to the northward, and he had to move with caution. Nevertheless, by midday he had reached the inner edge of the boundary forest :—

Page 347.—"We arrived about midday at a broad, shallow reed-grown brook and camped at the edge of the forest of the northern frontier. This was our last march in Kikuyuland. We had only to pass through the wood and we should be again in the open uninhabited wilderness."

74. The position of the camp has been placed by Mr. Gosden of the Survey Department at a point five miles south of the present boundary of the reserve. The manner in which this conclusion has been reached will be explained later, and it is only right to say that the data provided by Von Hohnel's map and diary of his journey are too meagre to warrant any very precise deductions. But it leaves no doubt but that the forest line was much further south than it is to-day.

75. This is also shown by the map of Sir Alfred Mackinder's journey (*see* copy filed in Volume I of the original record of the evidence). The colours in the original are so faint that the copy has been prepared to bring these out more clearly. The present position of the farm area is shown in the copy though naturally not in the original. Though it is not stated on the map at what date it was prepared it may be concluded from the position of rail-head, marked "July, 1899" that it was made about that year. It is probable that the colours were put in at the same time. These

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purport to illustrate : (a) grassy steppes ; (b) dense forest ; (c) cultivation with remnants of forest ; and (d) Alpine vegetation. There are so many obvious inaccuracies in some parts of the map that it would be foolish to place too much reliance on the other parts, but for what it is worth it may be noticed that the forest belt between Ndoro (*see* next paragraph) and the cultivated land extends much further south than the present boundary of the Kikuyu Reserve.

76. Count Teleki took three days marching to get from this inner frontier camp north of the Gura River to his outer frontier camp at Ndoro. His average daily journey between Ngongo and Ndoro was only about five miles. Mr. Gosden's reproduction makes the total a straight ten miles from the Gura Camp to Ndoro. The first day's journey was through thick bush rather than forest (p. 348).

77. The position had altered considerably when Mr. John Boyes visited the district in 1898, and he found a man named Kakeri, whom he describes as a powerful chief, living near Nyeri. On page 139 of his book he states that Kakeri was living on the actual site of Nyeri Township, but he has admitted in evidence that he may have been mistaken. The information obtained by the District Commissioner has now established that the man in question was Kakeri wa Ngunju, who was alleged in evidence by Chief Nduini to be the father of the young man who killed the Goan and Somali traders at Kiandongoro. He was a man of wealth and influence around Nyeri, but the site of his village has been located at a point on the edge of the present reserve about four miles north-west of the centre of Nyeri Township.

78. Of Chief Nduini Mr. Boyes stated that, to the best of his knowledge and belief, he or his family were living right up on the forest edge, approximately where they are living now, that is to say, at the extreme northern limit of the reserve.

79. In Nyeri Native Tribunal Revision Case No. 23/29 the defendant was the son of Chief Nduini's elder brother. The disputed piece of land was on the *githaka* known as Ihururu, which is the piece of native reserve which juts out west and north of Nyeri Hill. The Defendant, having stated that there were no *githaka* there till his father first cleared the land, proceeded :—

“Gikonyo came afterwards and passed by my father and went on ahead, and Nduini did the same. Beyond Nduini's even now there are no *ithaka*.”

80. Brother Benedetto (Evidence pp. 546, 547) stated that he knew Ihururu and that it was bush land when the mission first went there in 1903. He heard that the Aithirandu clan were to the

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west of Nyeri Hill. Chief Nduini's father's village, he stated, had been at the site of the present Kamakwa market, which is in the reserve.

81. The mission to which Brother Benedetto is attached is at Mathari (L.O. 1105), which lies between Nyeri Township and Nyeri Hill. His evidence is that there were no natives there in 1903, and that the word "Mathari" itself means "the place of dividing." He states that there were Masai on the site of the present polo ground which is $4\frac{1}{2}$ miles to the north of Nyeri Township.

82. The Nyeri Local Native Council ask for Nyeri Hill on the ground that it was formerly used for sacrificial purposes. But no evidence has been advanced to show that it was more venerable than the hundreds of other places which were used for a similar purpose. Brother Benedetto said he had never heard of its having been used for that purpose, though he admits that it might have been.

83. The gazettelement of 1913 (*Official Gazette*, 1st November, 1913, p. 935) included Nyeri Hill, the Mathari Mission and the Muringato Forest Nursery in the reserve. The gazettelement of 1926 (*Official Gazette* of 13th October, 1926, p. 1214-1217) excluded them.

84. It is probable that some degree of Kikuyu occupation had existed in this area:—

- (a) Kakeri had a large following in 1898 and was regarded by Mr. Boyes as a powerful chief. It seems unlikely that he could have been confined to the small area in Chief Nduini's present location especially if the claims of the families of Nduini and Nderi in the same neighbourhood have any substance in them.
- (b) Headman Nderi has submitted a memorandum claiming Kahehu, a neighbouring area a little way to the north. While his claim that it was his father's land is by no means proved, it is certain that he himself lived there with his followers for several years from about 1900.
- (c) The fact of its gazettelement in 1913 supports the view that it was regarded as Kikuyu country.
- (d) If Chief Nduini's location to the west and north-west of it has rightly been declared native reserve, it is hard to see how this land can have been surrounded on three sides by native land without itself having been native land.

85. Nevertheless there is evidence that much forest and thick bush remained, and there is nothing to suggest that the land was

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extensively used by the Kikuyu for cultivation or grazing, and probably not much material loss occurred through its exclusion from the reserve. The presence of Māasai *manyatta* on the site of the present polo ground must have acted as a distinct check on the freedom of the Kikuyu to use the land as they pleased.

86. While we shall not undertake to say where the limit of Kikuyu territory was in 1895, we consider that by the time that Nyeri administrative station was established the Kikuyu had won a footing there, and that their true boundary at that time followed along the Muringatu River where it leaves the present boundary of the reserve until it reaches what is now the western corner of the forest nursery; thence across by the nearest route to the Chania, and thence by the Chania to the present boundary. According to that view a block of 6.08 square miles has been taken out of the reserve.

87. While for the purposes of the "Profit and Loss" account which appears in Chapter VI, the whole of this area will appear as taken from the Kikuyu, it will be treated for purposes of assessing compensation as a special case and will be reviewed as such in Chapter X, since the fact that the area has been developed partly as a mission and partly as a Government station and township, providing essential services to the Kikuyu, ought to be taken into consideration.

Along the
Aberdares to
the Southern
Chania River.

88. We now trace the border along the Aberdares. The existing boundary of the reserve follows the forest line as it stood at the time of the demarcation in 1907. It was a "give and take" boundary and was done on broad lines (Evidence of Mr. A. G. Baker, p. 451). Mr. Horne considers that there was more take than give (Evidence p. 586). It is not unnatural to suppose that this would be the case because any straightening out there might be would entail much less labour on the spot if a piece of grass-land projecting into the forest was cut off. But there is no direct evidence that there was any substantial balance either way, and both Mr. Baker and Mr. Battiscombe thought that the natives were fairly treated (Evidence pp. 451 and 410) and we are satisfied that, however that may have been with regard to the actual position in 1907, the boundary was a very generous one as regards the Kikuyu as compared with what the position must have been in 1902.

89. The present general average width of the Fort Hall Reserve is in the neighbourhood of twenty-three miles. Count Teleki represented the average width of the Kikuyu country to be from eight to eleven miles (p. 351). This cannot be taken very seriously since he was merely passing through the country and had no good means of observing it. But Mr. Hall's opinion is not

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so lightly to be disregarded since he knew the Kikuyu intimately. It is given in "British East Africa or Ibea" (by P. L. McDermott):—

Page 423.—"Mr. Hall describes the country as about 100 miles in length and fifteen to eighteen miles in breadth, encircled by a dense belt of forest, which affords effective protection to the people from their enemies. The elevation of the country varies from 6,000 to 7,200 ft. . . . With the exception of small patches of excellent grass, which are kept for grazing purposes, and a few small swamps, every available piece of ground is under cultivation, and the district might be described as one vast garden.

"The Kikuyu have cleared their country of forest by their own exertions and continue to extend this operation."

90. Mr. John Boyes stated in his evidence (p. 728) that in 1898 the village of a Kikuyu chief named Karuri, who was of mixed Dorobo-Kikuyu extraction, was situated within a mile of the forest edge. That accords pretty well with its present position, about $1\frac{1}{4}$ miles from the forest to the west of it, and would appear, at first sight, to suggest that there has not been much destruction since that date. But while there may not have been much destruction in the immediate neighbourhood of Karuri's, this was because he had already created something of a salient for himself by cutting ahead of his fellows. Much forest land still existed behind him, which other Kikuyu now engaged themselves in destroying. A letter dated 15th December, 1907, from the Chief Conservator of Forests to the Secretary of the Administration makes this clear:—

"The destruction of forest that has taken place during the last few years can only be described as appalling. It will be sufficient to cite one instance from a recent report by Mr. Cox of the Survey Department:—

'On my march from survey beacon Muhenia . . . to beacon Kiaheho . . . I noticed much destruction of forest. My road lay along the western edge of Kikuyu cultivation in Karuri's district, and when I passed early in September last, the natives were cutting and burning the forest in order to move further west.' "

91. The report was made in the same year as the forest boundary was demarcated. Yet Muhenia beacon is two miles outside the forest reserve and Kiaheho is eight miles outside it, and they are ten miles apart. This indicates that in 1907, the year in which the forest reserve was demarcated, a block of land amounting to about forty square miles on this ten-mile front was included in the Kikuyu Native Reserve, though it mainly consisted of forest.

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If this sort of thing was done all the way north to Nyeri and all the way south to Limuru, there does not seem to be much force in the contention that there was more take than give on the part of the Forest Department when the boundaries were demarcated. It is obvious that we cannot think of the forest edge of the Aberdares as having been a clear-cut boundary. The Kikuyu were cutting and burning their way into it haphazard, and the result was a jagged line with indentations and promontories extending for miles. It is therefore quite impossible to reach a conclusion as to where the forest boundary was in 1895.

92. We might attempt a "give-and-take" line by way of a rough approximation, and we might perhaps take Mr. Hall's estimate as a guide and, by comparing it with the present width of the reserve, conclude that an average depth of round about six miles has been cleared since then. This estimate is too high to be easily credible and should certainly be discounted. The locations on the Aberdare Forest boundary have been inhabited in reasonable density for many years, and the apparent forest must have been largely a shell concealing the habitations and clearings. The very rapidity with which it has disappeared helps to prove that.

93. For this reason we shall not deny to this area its right to be classed as "unequivocal Kikuyu territory" in 1895, but we shall add the qualification that it had not yet been fully won from the forest. This distinction we shall mark by a line drawn on the map with the help of such information as we have. It may be of assistance in assessing the "Profit and Loss" account of the Kikuyu when we have to compare the value of what they have been given with the value of what has been taken away.

94. The area round about Nyeri, of which we have already spoken, may appropriately be treated in the same way.

The Western
Boundary of
the Kiambu
District.

95. When we come south of the Chania into Kiambu District there is equal evidence that the destruction of the forest was proceeding rapidly. In 1907 the Conservator of Forests (Mr. Hutchins) wrote :—

"The forest between the Lari Swamp and the Aberdare-Saltinia Range is being rapidly destroyed by the natives. I have elsewhere quoted Mr. Hinde's opinion that this destruction is going forward at an alarming rate. Mr. Hinde estimates that a forest belt averaging half-a-mile in breadth is being destroyed yearly." (See Report to the Secretary of State 1st June, 1907, in L.O. File 7,188.)

96. We may therefore conclude that the present forest boundary in that quarter is very much further outwards than it was in 1895, and it may be regarded as certain that the 1907 boundary

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included in the reserve all that was ever used by the Kikuyu in 1895 including the forest glades in which they used to depasture their cattle. It should be noted that the land behind the present forest boundary rises very rapidly all along the Aberdares, and a line taken parallel to it at a distance of two miles in shows an average height of 8,000 ft. In spite of the large number of huts which the Kikuyu represent to have been inhabited in the forest (Evidence pp. 83 and 98), one cannot easily credit that they ascended to these altitudes to depasture their stock in the dense forest, and it may be taken as practically certain that the huts were situated nearer to the edge.

97. As against this view might be quoted the various references to Mianzini as having been Kikuyu country (position shown on Thomson's Map, Teleki's Map, the War Office Map, and Jackson's Map). But a closer study of them shows that in so far as that country was occupied at all, it was by Dorobo rather than Kikuyu :—

Discovery by Count Teleki of Lakes Rudolf, etc.

Page 287.—“Purchases are therefore either made here (Ngongo Bagas) where the natives are dealt with direct, or at Mianzini, a place a little further on, also on the borders of Kikuyu, where the Dorobo act as go-betweens.”

From “Early Days in East Africa” (Sir Frederick Jackson).

Page 172.—“Our last camp in the inhabited areas was on the edge of the deep and thickly wooded ravine . . . Next morning in drizzling rain and fog . . . we entered the forest and for the next four days we crawled along until we reached Mianzini, where we camped in an open space surrounded by bamboos.”

(Note.—Sir Frederick had started his journey from a camp which was practically on the site where Muthaiga Club is now, and took six days to get to Mianzini, for the last four of which he went through uninhabited bush.)

The Conservator of Forests, Mr. H. M. Gardner, commenting on this passage in his memorandum to the Commission (Evidence, p. 932) states that, if it took Sir Frederick four days to march (or crawl) from the last inhabited areas on the lower forest edge to Mianzini, these habitations must have been “well on the Nairobi side of Limuru Station” and he adds :—

“An invasion of the forest further than Limuru by the Kikuyu did not begin, according to my information, until the advent of the Railway.”

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Extract from "Proceedings of the Royal Geographical Society." (Vol. XIII, new series, 1891, p. 194.)

"Mianzini (8,650 ft.). Caravan stayed from 23rd August, to 10th September for food to carry them to Sotik. Jackson established friendly relations with a Masai Laibon there."

(The year in reference is 1889.)

From Evidence of Turuthi s/o Githira, a Dorobo Headman living near Mianzini, before the District Commissioner at Kiambu on 22nd October, 1932.

"Our claim before the Land Commission is on behalf of us all. Our boundaries are shown roughly in our petition to the Land Commission. Within those boundaries we have sold a small bit . . . Lari Forest has been sold. Some near Escarpment has been sold and some not."

98. The conclusion suggested is that, while Mianzini was regarded by the old caravans as being Kikuyu country in the sense that provisions could be bought here from the Kikuyu through the mediation of Dorobo, and in the sense that one had to be on guard against the occasional arrows shot by Kikuyu bowmen concealed in the bush, it was not in any sense in the permanent occupation of the Kikuyu, and was more in the occupation of the Dorobo. The issue of the alleged sales of forest land will be reviewed in Chapter VII, but will not affect this opinion as to visible occupation.

99. The cultivation in the Lari area, now represented by the Lari and Ngarariga Reserves, began some time in the period 1898 to 1902. In an article published in the Journal of the African Society in 1917 the late Mr. Mervyn Beech, who was then Assistant District Commissioner in charge at Dagoretti, wrote of it:—

"Location (e) (about 4,000 acres) was interesting as it consisted of new forest land to which the Kikuyu had emigrated not more than 15 years ago. Such as are here live side by side with the Dorobo with whom they have to a large extent intermarried. The holdings were apparently bought here as hunting areas and cultivation is quite recent. The location is situated in the forest at the summit of the Kikuyu Escarpment overlooking the Kedong Valley and was divided into 30 holdings."

100. A group known as the Mbari ya Kiheriko has lived for many years in the neighbourhood of Kijabe Mission. It was represented in sworn evidence before Mr. Lydekker, District Officer, in February, 1928, that one, Ngure, the father of Kiheriko, bought land there from two Dorobo named Sutwa and Kabito, and that Kiheriko himself completed the purchase by a payment of 300 goats,

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other goats having already been paid by Ngure. The sons of Kiheriko are men in the prime of life or in early middle age and, since one of them attested to having seen the goats paid over, the transaction cannot be of a very remote date, although it is possible that Kiheriko was living there "with the Dorobo", as one witness has it, for several years before that payment was made. The census list made by Mr. Vidal, District Commissioner, in 1928, and recorded in the same file (Kiambu, LND.3/8) shows 71 men, 42 women and 97 children as the descendants of Kiheriko and his brothers, and if any other natives were living there as right-holders they were so few that their names were not mentioned. Mr. Vidal's conclusions after spending two days investigating the claim on the spot were as follows:—

"It is quite clear that Kiheriko and his three brothers, Muchai, Mangare and Maina, owned a *githaka* on what is now the Africa Inland Mission land in the years before and whilst the Railway was being built . . . There is . . . very strong evidence that Kiheriko's villages, *shambas* and grazing grounds were all situated on their southern border . . .

"Whilst the construction of the Railway in this area was taking place, various murders and thefts from coolies and porters building the Railway took place probably in the years 1900 and 1901. In consequence of these the Administration, on the information of the Headman Njerogi, suspected Kiheriko and his men, and they therefore burnt a number of villages of Kiheriko and drove off the inhabitants to a place called Kararua."

101. The evidence does not suggest more than that the immediate family of Ngure was living among the Dorobo when the Railway was built and possibly as early as 1895. This family has expanded, as polygamous families often do when they are fortunate, until in 1928 it reached, along with its dependants, the number of 210. It does not indicate that the land was Kikuyu country in 1895. On the contrary the implication is that it was Dorobo country. The transaction of purchase, whatever it amounted to, was not completed till afterwards.

102. The Forest Department map of 1909, of which a photographic reproduction in miniature is filed in Volume I of the original record of the evidence, shows how very scanty was the cultivation even at that date. An analysis of it will be given later on. Even to-day a great part of the area is virgin forest, except for the location to which the Kikuyu began to penetrate in 1902, as Mr. Beech reported.

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103. The evidence of Mr. G. S. Baker, late Assistant Conservator of Forests (Evidence, p. 652) is that there were practically no natives on the south side of the Railway between Kijabe and the Kamiti River in 1902:—

“From Kijabe on the south side of the railway line until one got to about Mile 357 on the Uganda Railway there was not a Kikuyu in any of the forest. There were a few small *shambas*, probably about a dozen, south-west of Mile 355.”

This, taken in conjunction with Mr. Beech's statement as to the settlement of the Lari area on the northern side having started about 1902 and with Mr. Lydekker's and Mr. Vidal's investigation into the settlement on this side of the Kijabe Mission by the father and brothers of Kiheriko, prove that the whole Aberdare Forest between the (Southern) Chania and the Kamiti was almost free of Kikuyu until after 1902.

104. The same thing applies to “Uplands”. The Forest Department map of 1908 shows only one village on it. It is called Muthama's. Mr. H. M. Gardner, Conservator of Forests, has stated in his memorandum to the Commission (Evidence, p. 932) that Mr. G. S. Baker informed him that on the south side of the Railway he “only remembered one village beyond the Kijabe Swamp, and this belonged to a man called Muthama.”

105. The same is also true of the belt of farms from L.O. 3696 to L.O. 241/2, which juts up into the forest reserve north of the Kamiti River. Mr. Gilbert, the Surveyor General, writes concerning them in a memorandum addressed to the Commission:—

“Re Farms L.O. Nos. 237-240, Limuru . . . The original survey was not carried out by me but by Mr. Woodruff some years before 1913. I was engaged on the definition of the boundary between the freehold and the leasehold portions, but as errors in the original work were revealed in the course of my survey, I eventually made a re-survey of the farms, but did not extend this to include L.R. No. 241 to the north.

“At the time of my survey the land had been cleared roughly up to the south bank of the Kamiti River shown on the attached print. The cleared portion still contained patches of forest but there were numerous *shambas* and wattle plantations. In particular I remember a large maize *shamba* extending across the boundary line IB4-BS7 and about 200 yards northwards.

“To the north of the Kamiti River the forest stretched dense and unbroken, though I recollect seeing a small clearing about two acres in extent in L.R. 240. There may have been one or two more similar patches which escaped my notice, but in an area of 100 acres they would not upset the statement

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that north of the Kamiti River the land was still under forest. I did not survey L.R. 241 to the north but from what could be seen of it in the course of cutting the southern boundary and about a thousand yards to the western boundary I derived the impression that the whole of it was under dense forest."

106. Before accepting the conclusion suggested it is right to regard the native evidence, and consider what weight can be accorded to it.

107. The total area of the Aberdare forest between the (Southern) Chania and the Kamiti on the north side of the Railway, together with the native reserves now contained in it and together with Uplands and the Africa Inland Mission and the belt of farms to which we have referred, is 174 square miles. The claims made by Kikuyu family groups to rights in this area have been summarized in a tabulation (Evidence, p. 358) which shows that the number of *mbaris* which have made claims is 112. They represent 39,597 persons now living, who are represented as either having occupied the area as right-holders or relations in law or tenants or as being the descendants of such occupiers. Only thirty years having elapsed since restrictions on the use of the forest were introduced by the Forest Rules of 1902, it is not conceivable that the population can have doubled by natural increase in that time, and in round figures we may say that these figures could only mean that there were at least 25,000 actual occupants at that time. This would mean a density of 144 to the square mile living in a country which is even now for the most part virgin forest.

108. Only 81 of these 112 *mbaris* have stated the number of goats and other things which they paid to the Dorobo for the land. Their alleged payments total 39,240 goats, and other things to match, including four girls given in marriage, and blood-money for two persons killed. If we allow for the other *mbaris* proportionately, and express the whole sum in terms of goats at an assessment following native custom, we should arrive at a grand total of not less than 70,000 goats. When the total population of the Kiambu District was in the neighbourhood of from sixty to sixty-five thousand, are we expected to believe that nearly half of them were occupying the Aberdare Forest or that the thrifty Kikuyu would have paid this colossal sum in goats "many centuries past" or even before 1895 for land which was still virgin forest in 1902 and to a large extent is so to-day?

109. Much of the claim is heavily disputed by the Dorobo. The "Mbari ya Chairo" (Dorobo) claim 1,193 members and the "Mbari ya Tlungu, Gachoka, and Kingora" (also Dorobo) claim 1,870 members. Even these by themselves are a heavier population than the forest can ever really have supported.

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110. One could go on illustrating the absurdity of these exaggerations. But it is not necessary to labour the point. After every allowance has been made for the probability that the same *mbari* may have been included under different claims and so have appeared twice in the list, we do not see how the Kikuyu evidence regarding this area can be regarded otherwise than as a complete misrepresentation of the facts and one is eminently justified in disregarding it. If any lingering doubt were left, the following quotations from Mr. R. O. Preston's "The Genesis of a Colony" should suffice to dispel it:—

From Chapter XIX.

"Rail-head was now fast approaching the summit of the great Kikuyu Escarpment. At this height, over 7,800 feet . . . we had made a temporary camp on the borders of the Lari Swamp. Our camp had not been long established when some natives came in with information that a herd of elephant were in the dense forest close by. Promptly our guns were mustered and three of us started out after the ivory. We soon reached the forest and plunged right in. The great interlaced masses of branches and vines overhead made the place almost dark, but on we struggled, forcing our way through thickly growing bracken, past tall tree ferns, and network of tangled creepers. We kept well together until we reached a patch of wild brambles. Here we stuck. All attempts to get through failed, but we kept at it until it seemed evident that, if we did not give in, we would return to camp in rags. We gave the brambles "best" and retraced our steps, making for the elephants from another direction."

From Chapter XX.

"Approaching the Escarpment the train climbs innumerable curves through dense forest and the guard and driver are seldom in sight of each other . . ."

111. Further significant evidence concerning the nature of the Kikuyu occupation in this area has been given to the Commission by Mr. Battiscombe, the Hon. Charles Dundas, Mr. A. G. Baker and Mr. Isaac. Relevant extracts are quoted in section (d) of the Appendix.

The Forest
Edge North of
the Kamiti.

112. While the evidence shows that practically everything west of the present boundary between the Chania and the Kamiti was forest, it does not show how far the forest extended to the east of the reserve boundary. Practically the only evidence on the subject is Mr. Hinde's report that destruction of forest was going on very rapidly, and it is therefore reasonable to suppose that it extended a considerable distance further to the eastward in 1895 than in 1907 when the Forest Reserve was demarcated.

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113. We have now carried our boundary to the Kamiti, and may well pause at this point to consider what the Kikuyu have gained or lost in this area as the result of the demarcation of the forest boundary in 1907. •

114. We leave out of account the question of Kakeri's and other native settlements round Nyeri, allowing it to stand over until we balance the account in Chapter VI. Here we consider only the Aberdare boundary.

115. No compensation was paid to the natives, and the question is whether any compensation was due.

116. The case for the Kikuyu, if they were ever content to put any case with moderation, might be argued by them as follows :—

(1) "You call it a 'give-and-take' line on the ground that, while you took some of our clearings, you left us several patches and promontories of forest. But you cannot really regard these as a set-off. Your only justification for taking any forest was for protecting essential water supplies, and these outlying patches were not necessary for that purpose. They were necessary to us and you cannot regard it as a 'set-off' that you did not take them.

(2) We therefore claim compensation for what you took in the forest—the clearings where we used to graze our cattle and the trees on which we used to hang our honey barrels. We will waive the point about free timber and firewood, because we grant that the prevention of further destruction was necessary in our own interest as well as that of the country. Nevertheless, we had regarded this land as open to us for future expansion and it is possible that when we have learnt to grow trees in our own reserve (and in this connexion we call attention to the several thousand acres of our wattle plantations) the strict preservation of the area as forest may not be necessary, and we ought to have a reversionary interest in it.

(3) While we grant that the conservation of the forest was of benefit to us, in that it has helped to conserve our water-supply and our climate, nevertheless we think that, if it had belonged to a private European landowner, he would have been compensated.

(4) In regard to the area south of the Chania our argument is strengthened by the fact that we bought the land."

To these points the Forest Department might reply :—

(1) "Much of the land on both sides of the line was still substantially forest and the Kikuyu had not yet fully made good their occupation even on their own side. The settlement

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was generous to them. In addition to Mr. Cox's report, Professor Gregory may be cited ('Rift Valleys and Geology of East Africa', 1921, pp. 154 and 166);

of 1893.—'The country, especially in Northern Kikuyu-land was then covered by such dense forest that it was rarely possible to obtain a general view of the country.'

of 1919.—'One of the most startling changes between the conditions of 1893 and 1919 was that observed from the hills at Nyeri over a wide range of open downs which had replaced formerly impenetrable Kikuyu forests.'

(2) The claim for reversionary interest is not likely to arise, since no great confidence can be placed in the planting of trees by the Kikuyu. If the price of wattle falls, they will not plant it, except a little for firewood.

(3) It is true that a private landowner might have been compensated. But the Kikuyu were only permissive users, and the extent of their use has been compensated in the 'give-and-take' line. As for amenities, the beneficial effect of the forest on climate and water supply more than counterbalances whatever amenities have been lost.

(4) As to the claim of purchase, one cannot help being sceptical when more than 40,000 Kikuyu claim rights derived from purchase in the Aberdare and Escarpment Forests south of the Chania.

(5) The Forest Rules of 1902 were applied to an area extending four miles each side of the Railway from Limuru to Kijabe with the exception of 'established cultivation of the Kikuyu on the east of the line from the Limuru to the Lari Swamp.' And yet the Kikuyu went on clearing, with the result that, when the line was cut, they got more than they would otherwise have had, and therefore more than they deserved."

117. We consider that, on the balance of these two arguments, no injustice has been done to the Kikuyu. But the point must be taken that, when Government fixed the boundary, it prevented the Kikuyu from expanding in the manner which was natural to them, and under the first term of reference we have the duty of providing for their needs in some other way—not necessarily as a tribe, and not necessarily by the provision of a block of land, but by providing scope for their development in the way which appears most suitable for them.

118. There remains a further point to be considered.

Four areas, which were situated in the forest, were excluded from it by the demarcation of 1907 and turned into Native Reserves. Three of them named Lari, Ngarariga and Kithirioni, are situated

Lari;
Ngarariga;
Kithirioni;
Mukoma's.

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in the Escarpment Forest, which we have already found to have been practically uninhabited in 1895, except for a few Dorobo, who were joined by the family of Ngure (now called the Kiheriko *mbari*) and a very few other Kikuyu at the time when the Railway was being constructed. The fourth area is Chief Mukoma's, west of Limuru. This is south of the Kamiti, but it is convenient to deal with them all together. We are satisfied on the evidence before us that in 1902 it was almost as sparsely inhabited as the other three.

119. Between 1902 and 1907 some Kikuyu who had been dispossessed from lands alienated to Europeans and particularly the Limuru farms began to colonize the Escarpment Forest and the land west of Limuru in considerable numbers. The map at the end of Volume I of the original evidence shows the position as it was in 1907. It is a reduced copy of the map made in that year by Mr. A. G. Baker, who was at that time a Forest Surveyor and later became Surveyor General.

120. The copy differs from the original in two respects :—

(1) A blue line has been drawn enclosing an area of 30,866 acres, which we have selected for analysis.

(2) Red lines have been drawn to show the four native reserves mentioned above, which have been numbered respectively A, B, C and D.

121. On analysis the 30,866 acres enclosed by the blue line are found to be composed of 3,041 acres described as cultivated; 3,592 acres of grassland; 7,388 acres of scrub; 16,546 acres of forest, and 299 acres of swamp. If we count the cultivated and grassland as land in use, the scrub as partly used, and exclude the forest and swamp, we get :—

	<i>Acres.</i>
Land in use 	6,633
Land in partial use 	7,388
Total ...	<u>14,021</u>

122. The whole of these clearings, except the very few existing before 1902, had been made in contravention of the Forest Rules of 1902, which were applied to this area, and prohibited the cutting, damaging or removing of any tree, timber, or grass and the pasturing of any stock.

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123. In order to prevent further destruction of forest, Government concentrated the natives into the four reserves already described. The boundaries were gazetted in December, 1912. The situation in 1907 was that they contained:—

						<i>Acres.</i>
Cultivated	...	...	...	...	...	2,580
Grass	...	...	...	...	...	2,050
Scrub	...	...	...	...	...	2,910
Forest	...	...	...	...	...	1,100
Swamp	...	...	...	...	...	110
Total					...	8,750

124. The effect of this move was that the natives were given an area which, when they had cleared it, would provide a fair equivalent for all the cultivated and grassland which they lost, and also leave a balance of some 2,100 acres to be set-off against the use which they had had of the scrub in which their goats had run.

125. This was not ungenerous treatment. In spite of the fact that their clearings were mostly illegitimate, the natives were given a fair equivalent for all that they had effectively occupied. No doubt this was because it was felt that these natives, having lost their lands on the Limuru farms, should be allowed something in compensation.

128. We consider therefore that when Government gazetted these areas as native reserve, it amounted to a gift to the Kikuyu which may legitimately be set-off against an equivalent area of the Limuru farms. But we must add two qualifications. Firstly, if it can be established that the Kikuyu had to make payments to the Dorobo to secure their footing in the new area, and these payments exceeded the compensation which they received for the land of which they were dispossessed, some allowance must be made for that and for the additional disturbance involved. Secondly, we shall allow for the clearing which already existed in 1902. But it happens that a set-off to this has been provided by other means, seeing that four hundred acres of the Africa Inland Mission at Kijabe has been surrendered to the reserve in order to accommodate the Kiheriko *mbari* and L.O. 4450 (440 acres) has been earmarked as a further addition to the reserve. A few hundred acres in addition to that should be a sufficient set-off to all pre-existing interests before 1902 and also a sufficient compensation for any material loss in the shape of goats paid over to the Dorobo. The extravagant claims of the Kikuyu in regard to the number of goats paid over

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(see section 108 above) convinces us of the utter hopelessness of getting any reliable evidence on this point, and we must make up our minds on the general probabilities of the case.

127. The total additions to the Kikuyu Reserve in this area, actually gazetted or agreed and awaiting gazettelement, are :—

	<i>Acres.</i>
These four reserves	8,750
The land ceded by the Africa Inland Mission in the settlement with the Kiheriko (L.O. 388/1)	400
L.O. 4450	440
Total ...	9,590

128. If 1,750 acres out of the 8,750 were to be regarded as having been admissibly acquired by the Kikuyu by first clearing and use before 1902, and the remainder of these four native reserves and the other two areas mentioned were to be regarded as given, we think that such an assessment, though necessarily arbitrary, would be a fair conclusion on the facts as known.

In that case the area "given" becomes 7,840 acres or 12.25 square miles.

CHAPTER IV.

THE SOUTHERN BORDER WHEN THE PROTECTORATE WAS DECLARED.

(South of the Kamiti River.)

South of the
Kamiti.

129. We now come south of the Kamiti and on to the contentious area now known as the Limuru farms. A map has been prepared by the Survey Department to illustrate Count Teleki's journey, and is reproduced here. The first step in preparing it was to correct the error in orientation which occurs in Count Teleki's map and then to trace out his line on a modern map. This was then compared with the notes in the book which record the altitudes and some other details which were of use in fixing the position, and corrections were made so as to agree with these notes, and the final result is regarded as being as accurate as circumstances will permit. It shows Count Teleki's route as passing near the eastern end of the Limuru farms, possibly crossing what is now Mr. Knight's farm (a doubtful point), and subsequently crossing what are now Kamunyu Syndicate, Njunu Estate, Kingatore and Kacheroba. Exact accuracy, however, cannot be claimed.

130. The date when Count Teleki was crossing the area or the neighbourhood of the present Limuru farms was from the morning of 13th September to the morning of 15th September, 1887, and extracts which will be found in section (e) of the Appendix show that at all events the eastern end of the Limuru farms was occupied Kikuyu country by 1887 and was not in the forest belt. It may be assumed that by 1895 there had been some further extension of cultivation towards the west. This undoubtedly received a very severe check in the famine of 1898-99, which largely accounts for the fact that, when these farms were alienated, only a sparse population was found and this land had largely reverted to bush.

131. In a memorandum by Mr. Hobley dated 20th February, 1921, in Secretariat File Archives 211/Vol. 1, it is stated that "compensation for actual standing crops was in a few instances paid by the landowner to the native cultivator." A register recording these transactions exists at Kiambu and has been examined by the Commission. The total amount entered, relating to the Limuru area, amounts to 1,049 rupees and 4 annas, all paid between 1903 and 1908. Compensation was paid at the rate of Rs. 2 an acre; this would represent 524 acres of cultivation in a total area of approximately 20,136 acres. The greater part of the compensation appears to have been paid for land in the central and western parts of the area, notably Mr. Buxton's, Mr. A. G. Caine's, Mr. Rainbow's, Mr. Duirs', Mr. Langmore's and Mr. Hall's. Having

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regard to the position in the eastern end of the area mentioned in the preceding section this particular evidence perhaps indicates that there was not much distinction between the degree of cultivation at the eastern and western ends.

132. While the total amount of cultivation for which compensation was paid represents only about 1.8 per cent of the total area of the Limuru farms, it would not be right to conclude that this was all the cultivation there was. In many cases it is probable that compensation was paid without a record being kept, and in some cases the record may have been kept in Nairobi, and there were also many cases in which the native occupier did not accept compensation, but elected to remain on the land.

133. In evidence given before us Mr. C. R. W. Lane points out that in 1896 the land on both sides of the line between Kikuyu Station and Limuru was occupied and cultivated by the Kikuyu. Dr. Boedeker, referring to the same year, states that occupation was on the east side only, but adds that the population north of the Limuru Station consisted of a few outcasts; the land near Tigoni was populated as thickly as the rest of the reserve, was cultivated and had villages; the Kikuyu had more sheep and goats than they have now. But this population largely disappeared in the famine, and the evidence of Messrs. Impey and Hall indicates that in 1904 the population had then become very meagre.

134. It would appear to be a just conclusion on this evidence that the Limuru farms were sparsely occupied by the Kikuyu prior to alienation, were somewhat heavily covered with bush, but were not forest, and it is probable that, before the famine, the degree of cultivation and occupation was greater. If we attempt to trace the inner edge of the forest as it stood in 1895 we must necessarily be arbitrary, but perhaps we cannot do better than draw it from the point where we left it on the Kamiti River in a slightly curved line (in the manner illustrated on the map) as far as Limuru Station and thence following the Railway to Muguga Station. This is probably a somewhat generous interpretation of the limit of "unequivocal Kikuyu country" in 1895, and gives them the benefit of most of the points of doubt.

135. Between 1895 and 1902 there was a certain amount of admissible acquisition by honeycombing of the forest land to the westward by a few clearings and settlements. The extent of the area which in our judgment must be held to have been affected in this way is shown on the map by a cross hatching of yellow and red on a green background, and is 4.50 square miles of country, situated close to the Railway, between the Kamiti River and the Muguga Forest.

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136. The evidence on which this conclusion is based is principally a map, Kiambu No. 1 of 1907, which shows several villages on the land leased to Mr. Kay Mouat (L.O. 176 and 177); the Dagoretti Register which shows compensation paid out to five native villages on that land; and Mr. Lane's evidence, referring to 1896 or 1897, that there was cultivation both sides of the railway from Limuru to Kikuyu Station at that time. The latter evidence does not correspond with the recollections of other witnesses and it is evident that such cultivation as there was must have been very sparse.

The map to which reference is made above was prepared by the late Mr. Justice H. R. McClure, formerly a District Commissioner in Kenya; a copy of it has been filed at the end of Volume I of the original record of the evidence.

137. It is fortunate that one of our number, Mr. Hemsted, has personal recollection of the area as it was in 1904, and we have therefore been able to make our decision with more certitude than would otherwise have been the case. We have decided that this area of 4.50 square miles was, as to its general character, forest land, but that by 1902 there were Kikuyu clearings in it which created a Kikuyu interest, which we may fairly assess as extending over one-quarter of the whole. We therefore compute the true loss sustained by the Kikuyu in this area, by reason of the subsequent alienation of the land, to be 1.12 square miles.

From Muguga
to Kikuyu
Station.

138. It is clear from Mr. McClure's map that the land on the east side of the railway from Muguga to Kikuyu Station was thickly populated by Kikuyu at that date, while on the west side of the railway 32 villages can be counted, of which all but ten are within a mile of the railway. This might be comparable to a density of about 30 persons to the square mile. There can hardly have been so many in 1896, or they would not have escaped the notice of Dr. Boedeker. The conflict of his evidence with that of Mr. Lane suggests that occupation on the west side of the railway was so sparse as not to be readily noticed. Again it will be necessary to be arbitrary, and we consider that the proper course is to draw a line from the south-east corner of the Muguga Forest Reserve round the villages shown on the map until the Neangara River is reached, and regard that as marking the inner forest edge.

Ndeiya.

139. It will be noticed that the boundary as here described excludes the Ndeiya grazing lands (73.76 square miles) from "unequivocal Kikuyu territory." In our judgment this is quite right, as these lands were in Masai occupation at that time. It has already been shown beyond reasonable doubt that the country west of Limuru was more Masai country than Kikuyu, and it is therefore evident that the Kikuyu could not have made use of the

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northern part of Ndeiya. Extracts from official letters which will be found in section (f) of the Appendix make it equally clear that they could not have used the southern part either. In this correspondence mention is made by Mr. S. L. Hinde of the fact that in 1898 a Masai stock route ran north-west near the north bank of the Mbagathi River to within a couple of miles of the Sclater Road about two hours' march west of Kikuyu Railway Station. This stock route ran right through Ndeiya, which appears to clinch the matter.

140. As against this the late Mr. Mervyn Beech, when District Officer at Dagoretti, stated that he was prepared to produce indisputable evidence that the country really belonged to the Kikuyu. It is not known for certain what "indisputable evidence" Mr. Beech intended to produce, but from the paper which he afterwards wrote for the Journal of the African Society in 1917 it may be assumed that it related to alleged purchases of land by Kikuyu from Dorobo. But the cases of which Mr. Beech gives most details are not in the Ndeiya area but in the neighbourhood more immediately round Dagoretti, and even those details have not turned out, when tested in court, to be quite as originally alleged. The issue was raised in the case of Kamani and Kitosho wa Kahoto versus Kioi wa Nagi in the High Court before Mr. Justice Maxwell.

141. It is very significant that, while almost all the land both inside and outside the reserve the whole way from Naivasha to Nairobi and beyond it is claimed by some Kikuyu *mbari* or other, Ndeiya is an exception. No particular *mbari* claims it, but it is said to belong to the whole tribe. In so far as the Kikuyu claim it as of right, it is probably held by them to be included in an alleged purchase by Chief Kinanjui from the Masai of a vast stretch of country. This claim will be examined in detail in another place, but it is enough for our present purposes to quote from Mr. Justice Maxwell's judgment in the case just cited:—

"I am fully satisfied that Kinanjui only acquired rights to any land in this neighbourhood after the Masai-Dorobo agreement." (He had found the date of this to be 1899. The neighbourhood is Dagoretti.)

142. The evidence regarding the first Dagoretti Station makes it abundantly clear that when it was founded in 1890 it was on the extreme limit or even a little south of the extreme limit of effective Kikuyu occupation. The site is shown on the map which follows Appendix No. 1. Extracts from published works in support of this conclusion will be found in section (f) of the Appendix. We also wish to draw attention to the evidence of Dr. Arthur, Mr. Lane, Colonel Stordy and Mr. Hobley, who agree in placing Dagoretti as the southern limit of effective Kikuyu territory; also

Dagoretti and
the Neangara.

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to the evidence of Mr. Johnstone Kenyatta, who considers that it extends to the Gitiba. The relevant passages are quoted in the same section of the Appendix.

143. On the weight of the evidence we are fully satisfied that nothing south of the Neangara River can be counted as having been "unequivocal Kikuyu territory" in 1895.

Between
Dagoretti and
Fort Smith.

144. Dr. Boedeker has given evidence regarding the arrangements made by Mr. Hall between the Kikuyu and the Masai and the establishment of a neutral zone, and he has produced a map in illustration of it. The impressions conveyed by the map and by the memorandum attached to his evidence are perhaps at variance. One gathers from the memorandum that the northern boundary of the neutral zone was practically the Nairobi River. He states:—

"In the course of time Hall finally persuaded the Masai to cease their raids into the Kikuyu country and in order to bind them to this he fixed a strip of neutral country extending due east between the two tribes, which commenced at the headwaters of the Mbagathi stream, and then towards the headwaters of the Nairobi stream which actually had been recognized as the natural boundary between the two tribes for many years."

It is true that the expression "due east" in the above passage suggests that the river cannot have been the exact boundary, but the general implication seems to be that the river was the boundary for practical purposes. When, however, one turns to the map, a different impression is created. There a neutral zone is shown shaded in a more or less uniform width and running considerably south of due east, and in a footnote it is stated that it was "sighted on Lukenya." Nothing which was set due east in those parts could possibly have been sighted on Lukenya, and the direction must obviously have been south-east by east. In the western half of the neutral zone as illustrated on the map this line is in conformity with the general direction of the river, but after that the river turns north-east by east, and its general direction makes an angle of perhaps thirty degrees with the line of the neutral zone.

145. A supplementary question was therefore put to Dr. Boedeker, who replied:—

"The extent of this discrepancy is illustrated by the triangle indicated by red dots which I have now caused to be put on the map. In my recollection this triangle was almost entirely covered with forest, and whether or not Mr. Hall's neutral zone included it, there were no Kikuyu living or cultivating there and for practical purposes it can be included in the forest belt."

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A reproduction of this map is shown in the first of the two maps facing page 701 of the printed evidence.

146. It is regretted that no official account of Mr. Hall's "treaty" has been found. We are satisfied, however, that there was an arrangement of this kind, and we consider that, whether it was made in 1894 or not till the following year, the *de facto* situation was that the Kikuyu had not the undisputed right to land south of the Nairobi River and we consider it to be properly excluded from "unequivocal Kikuyu territory."

147. A statement contained in a memorandum by Mr. Hobley (No. 38/1/2/12 of 20th February, 1912) provides corroborative testimony:—

"About 1909 the Quarantine Board with the approval of Government moved all these (Kikuyu) cattle back into the reserve. The agricultural portion of the reserve did not contain enough grass for these cattle; so they were nearly all located in an area south of the Railway, which previously they had been nervous of occupying on account of the Masai. It was a kind of neutral zone between the two tribes."

On the other hand, a letter written by Mrs. Hinde, widow of Mr. Hinde, a former Provincial Commissioner, makes mention of Mr. Hall having fixed a boundary between the Kikuyu and Masai, which was respected by both sides, but says nothing about a neutral zone (*see* section (g) of the Appendix).

148. Before concluding this chapter it will be well to record our opinion on Chief Kinanjui's claim to have bought land to the south of the Nairobi River, and generally on the question whether the land which is now Kikuyu Native Reserve south of the Nairobi River should more properly be accounted as won by the Kikuyu by legitimate processes of penetration, use, and possibly purchase, or as having been given to them by Government.

A Summary of the Question of Rights claimed to the South of the Nairobi River.

149. A summary of Chief Kinanjui's claim is given in No. 24 of the *mbari* claims. It is a mass of contradictions and we are satisfied that there is no substance in it. Nor on the other hand are we much impressed by the claims of various Kikuyu that they "bought" the land from the Dorobo Marimbe and Muinani. It is evident from the records that the land south of the Nairobi River was generally regarded as belonging principally to the Masai until the date of Mr. Hall's agreement, and there is indeed to be found in the Dagoretti Record Book a statement by Chief Kinanjui to that effect.

150. It is not quite clear to us whether Mr. Hall's arrangement was that there was to be a neutral zone, which neither side was to use, or whether his intention was that the Masai should

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recede and the Kikuyu advance. We have had evidence in both senses, but in either case it appears that ultimately the Kikuyu were allowed to occupy land which had not previously been theirs, and that at the time it could in a measure have been regarded as a gift by Government. On the other hand we shall not deny that the Kikuyu had already had a certain degree of use of the area—to the extent which has been revealed in the evidence reviewed in Chapter II—or that some family groups among them may about this time or possibly a few years earlier have made certain payments to the Dorobo for the enjoyment of certain facilities.

151. We consider that, on balance, the position about the year 1902 was that the area had been subjected to considerable penetration by the Kikuyu either with the definite permission or at least with the acquiescence of Government.

152. But it appears that, when the alienation took place, a large accretion of population in this area occurred by the immigration of natives from the farms, and it is believed that they were able to settle there and acquire rights without much difficulty, Chief Kinanjui apparently having constituted himself or having been constituted as a sort of bailiff.

153. On these facts our finding on the issue whether the land should rank as given by Government or as held by the Kikuyu by a prior right, is that it must rank as “mostly given.”

154. On the further point which arises, namely, whether an area given before the alienations should be allowed to be set-off in compensation against the alienations, we consider that to some extent it can be so set-off, and after weighing the merits of the claim on both sides we consider that, with the exception of two blocks to be mentioned below, half the area of the native reserve south of the Nairobi River can be reckoned as a set-off against the alienations. It has been cross-hatched blue and yellow on the map and represents an area of 7.60 square miles of which half (i.e., 3.80 square miles) counts as given and half as admissibly acquired.

155. The two blocks excluded from this finding are shown in blue, and comprise a total of 1.24 square miles. The western block was given to the Kikuyu when the Dagoretti Forest was demarcated in 1907, and the eastern block was given in exchange for certain losses in the Kabete area, including the land alienated for the Jeanes School, the Native Industrial Training Depot, the Scott Laboratory, and the Reformatory. These two blocks must, in our judgment, be accounted to have been added by Government from land which was not formerly Kikuyu territory.

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156. The next task is to determine the point at which the forest edge crossed the Nairobi River and ran northwards, forming the eastern boundary of effective Kikuyu territory past Fort Smith and towards Kiambu.

The Forest Edge North of the Nairobi River.

157. Dr. Boedeker drew on a map attached to his evidence the position of the forest in this quarter as he conceived it to have been about 1895. Subsequently, he amended this by another line, which he considered to be more correct after seeing his original line reproduced on a large scale map, which shows more detail. According to his amended line, the forest edge north of the river starts at the south-eastern corner of L.O. 6863 (St. Austin's Mission) and then runs to the north-west corner of the present Karura Forest Reserve; thence by the Karura River to the north-east corner of L.O. 4887; thence to the south-west corner of L.O. 76/3; and thence to the north-west corner of L.O. 79, on the eastern edge of the Thathini Swamp. At this point it stops, since Dr. Boedeker had no personal knowledge of it to the northward. This amended line is shown on the second map attached to his evidence. This line must now be compared with the other evidence which we have on the subject, and we may first consider it where it passes to the east of Fort Smith.

158. That Fort Smith itself was built in Kikuyu country is certain. Lord Lugard mentions in his book that he disapproved of the *boma* site because "it was situated in the very heart of the villages and fields of the Kikuyu."

The Forest Edge to the East of Fort Smith.

159. Evidence given to the Commission suggests that the forest edge in the direction of Nairobi was not very far away from the Fort. The relevant passages are quoted in section (g) of the Appendix.

160. There is a notable contrast between the position depicted by the witnesses whose evidence relates to the period before 1900 and that described by the witnesses who first came to Kenya afterwards. The allusions made by the latter witnesses to the possible existence of ground landlords is interesting and will be reviewed in a later chapter, but the matter of immediate concern is the position of the forest boundary to the eastward of Fort Smith in 1895 and the limit of effective or unequivocal Kikuyu occupation. We therefore attach the most importance to the contemporary evidence, and receive from it a fairly strong impression that the limit of Kikuyu cultivation in 1895 was at the eastern end of the Scott Laboratory ground. Whether the forest began immediately or some grassland or scrub country intervened is a point which remains in doubt.

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161. Father Bernhard differs from Dr. Boedeker as to the point where the forest edge started north of the Nairobi River, and puts it at the junction of the Neangara and Nairobi Rivers near the south-east corner of the Government Farm extension (L.O. 1898) whence he considers that it ran eastward to join Dr. Boedeker's line a little south of the railway. Dr. Boedeker, though agreeing that the site of the Scott Laboratories was where the first signs of cultivation appeared, does not agree that the forest started at this point, but states that the intervening land was scrub or grassland rather than forest. Being somewhat doubtful which version to adopt we recalled Dr. Boedeker, who was able to give us a detailed account of a journey which he undertook about 1896 to attend a sick Kikuyu native in this locality, and on the strength of his evidence we have decided that, although the neighbourhood of St. Austin's Mission was well timbered, there was sufficient occupation by Kikuyu for it to be classed as Kikuyu territory, and we have decided to accept Dr. Boedeker's amended line as an accurate indication of the limit of Kikuyu territory in this quarter, as it stood in 1895.

162. It is to be noted that the map on which Dr. Boedeker first drew the forest line for the Commission was a contour map prepared "under the direction of the Director of Surveys" in 1909, and much of the area which Dr. Boedeker included as forest belt is covered on the map with the conventional signs which indicate scrub.

Karura Forest
and
Thimbigwa.

163. Dr. Boedeker's amended line includes Thimbigwa in the forest. His earlier line excluded the greater part of it. The best evidence on the conditions at Thimbigwa is Mr. Knapp's, who went to live there in 1899. He states:—

"Mr. Krieger, who was with me, took up a holding and became owner of Thimbigwa Estate, which was then heavy forest . . . After the famine Mr. Krieger and I went up-country. We went north from Thimbigwa Estate and found a large number of clearings in the forest, which had been made in the last few years. But these clearings which had been made by burning, had been abandoned in the forest, and were overgrown . . . Mr. Krieger bought the Thimbigwa Estate from Kisinga for about 70 goats. I was there at the time and saw the goats handed over."

This extract satisfied us that, although there were Kikuyu who claimed certain rights there, the extent of which will have to be considered, the general character of the country both at Thimbigwa and to the north of it was forest.

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164. Evidence was given at Kiambu by Mr. MacLellan Wilson and Mr. Tait to the effect that the site of Kiambu Station had not been Kikuyu territory before it was taken by Government for an administrative station. On the other hand the natives claim it and diverse evidence has been given to the Commission as to the particular *mbari* which "owned" it. The *Mbari ya Aigi* have claimed it, and so have the *Mbari ya Mega*, who have also applied for all the back rents on shops, amounting to a total of about Sh. 35,000. Mr. Orde-Browne, a District Officer in Kenya from 1909 to 1915, had an office boy named Ali who claimed it. On the other hand it appears from a letter written by Mr. Hobley in 1913 that none of these claims was regarded by the tribe as being so strong that the tribe as a whole could not dispose of it, and he reported that the tribe wished to make a present of it to Government. However these things may be, the evidence of Mr. Lane is quite clear as to what he found there in 1896 :—

Kiambu
Station and
Eastwards.

"Either at the end of 1896 or the beginning of 1897 I left at midnight and went down the valleys to what is now known as Kiambu. We took the natives by surprise and found their cattle there. Those lands in the vicinity of Kiambu were grazed over by a few head of cattle, sheep and goats, belonging to the Kikuyu. They were more on the hills."

165. Colonel Ainsworth in his memorandum mentions the clearing of the site for the station in 1901.

166. On general probabilities it would seem that the site of Kiambu Station was scrub land in 1895, and not forest.

167. Mr. Knapp stated that he and Mr. Krieger went north from Thimbigwa to Kambui through forest. The direct path would be almost immediately east of Kiambu. He does not report that they emerged from the forest at any point before their arrival at Kambui, but they passed a number of clearings which had been made by burning. These appeared to Mr. Knapp to have been made before the famine and when he found them they had been abandoned and were overgrown. He stated :—

Kiambu to
Kambui.

"From Nairobi to Kiambu at this time was heavy forest, but patches of it had recently been cut down."

Dr. Boedeker's line is set back nearly two miles from the centre of Kiambu Station. If Mr. Knapp is correct, this clearly needs amendment.

168. Mr. Knapp found that on Kambui Hill itself there had been a Kikuyu village fortified for protection against the Masai. He said (a point which has not been recorded by the stenographer) that the Kikuyu habitations extended for about one mile east of the mission, and after that there followed about four miles of stumps of

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recently felled forest, and then one came to the forest itself. Mr. Knapp was subsequently recalled on this point and confirmed the above statement. The reference is to May, 1902, and indicates that in 1895 the forest edge was closer to the mission, but that the Kikuyu had subsequently destroyed more forest after the Masai had left the plains. It would be to clearing in this neighbourhood that Colonel Ainsworth refers in his memorandum where he states :—

“Sometime in 1895 an Elder named Ngwalu living near the Ruiru River got into trouble with the District Commissioner of Kikuyu because his people had destroyed some of the forest near his village; the District Commissioner ordered Ngwalu to return to his location on the higher part of the ridge. Certain cattle were seized. Ngwalu appealed to me as Sub-Commissioner for the return of the cattle. Consequently I proceeded with the District Commissioner to the spot. The result of the visit being that the cattle were returned and Ngwalu was allowed to remain where he was on his undertaking not to cut down any more of the forest; the Elder explained in all good faith that he was not aware that he was doing wrong in cutting down the trees. No claim to the land was advanced.”

It is not in the least probable that Ngwalu or anybody else refrained from cutting more timber for the next seven years, and one may conclude with certainty that the forest edge as found by Mr. Knapp in 1902 was further to the east than it had been in 1895, but it is difficult to say how much further. The fact that such an order was given in 1895 is interesting, since it indicates that Government was already undertaking the function, which is inherent in the sovereign power, of ensuring that the land is used to good advantage. As we have previously stated, we have agreed to regard land obtained before 1902 by first clearing and use as “admissibly acquired” and to be accounted as Kikuyu territory. But we cannot regard it altogether as legitimately won, because it is quite clear from the above instance and several others that much wasteful destruction of forest was carried out against the exhortations and orders of administrative officers, and we feel that we are perhaps stretching a point in favour of the Kikuyu in counting such land as their territory in 1902. After that date there can be no question of making further allowances in respect of any area in which Forest Officers were actively employed under the Forest Ordinance to prevent further encroachment.

CHAPTER V.

THE EASTERN AND NORTHERN BORDERS WHEN THE PROTECTORATE WAS DECLARED.

(From the Kamiti by Fort Hall to Nyeri.)

169. A search has been made in the files of the Secretariat, the Survey Department and the Forest Department for any documentary evidence of the forest belt between Kambui and the Thika River. Nothing of any assistance has been found. This is perhaps not surprising, as the evidence given before the Commission seems to suggest a doubt whether any very obvious traces of this forest existed after 1898.

Kambui to the
Thika River.

170. The documentary evidence is very meagre. Count Teleki, who was camped near the Thika River on 21st September, 1887, reports that part of his journey on the 22nd lay through "an uninhabited district" and adds :—

Page 331.—"We were told that it was deserted on account of the slaving raids of the Kamba."

Count Teleki states that on this day he camped at a distance of "about 2½ to 3 miles from the wood, which seems to encircle the whole district." The clear suggestion is that, if the Kikuyu had to leave an area uninhabited, though situated at a distance of some miles inside the boundary wood, it cannot have been a very effective barrier in this part, and there were probably gaps in it. It will be noticed that the map illustrating Sir Alfred Mackinder's journey shows no forest here, but only a line where open "steppe" land to the east is bordered by "cultivation with remnants of forest" to the west, whereas Thomson's map of 1884 shows "High Forest Region."

171. Dr Boedeker states in a supplement to his evidence (p. 701) that in 1898 he accompanied a military expedition from Machakos into Kikuyu country, and believes they crossed the line of the present Railway in the neighbourhood of the Ndarugu River, and thence they proceeded westwards into the Kikuyu country. They found nothing that could be called a belt of forest. "It was bush country with open grazing patches."

172. On the other hand Mr. J. Patterson mentions that in 1900 he and Mr. Krieger came from the direction of Kibwezi and reached Kikuyu country between Ndarugu and Ruiru Rivers, and struck a "timber belt", which they followed southwards till they came to Thimbigwa. It is possible that Mr. Patterson's route was somewhat south of that taken by Dr. Boedeker.

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173. The remainder of the evidence on this point is by witnesses who travelled at various times along the old caravan route. Their evidence in regard to this particular section of it is that they did not see any Kikuyu. Mr. Hausburg, who made the journey in 1899, Lord Phillimore, who made it in 1904, and Lord Cranworth, who made it in 1906, all attest (Evidence, pp. 391, 414 and 479) that they saw no Kikuyu natives and no cultivation in this part. Mr. E. B. Horne, who first made the journey in 1904, attests that all the country from the Maragua to Nairobi, except for a little cultivation near the Thara River, was "given over to game" (Evidence, pp. 585 and 586). The evidence of Mr. R. Weeks, relating to 1903, is to the same effect. Dr. Arthur, in 1908, naturally saw rather more cultivation, but when asked :—

"If a witness came before the Commission and said that in 1904 he went from Nairobi to Fort Hall and saw practically no signs of any natives until he got to the Maragua, would you think that was wrong?"

He replied :—

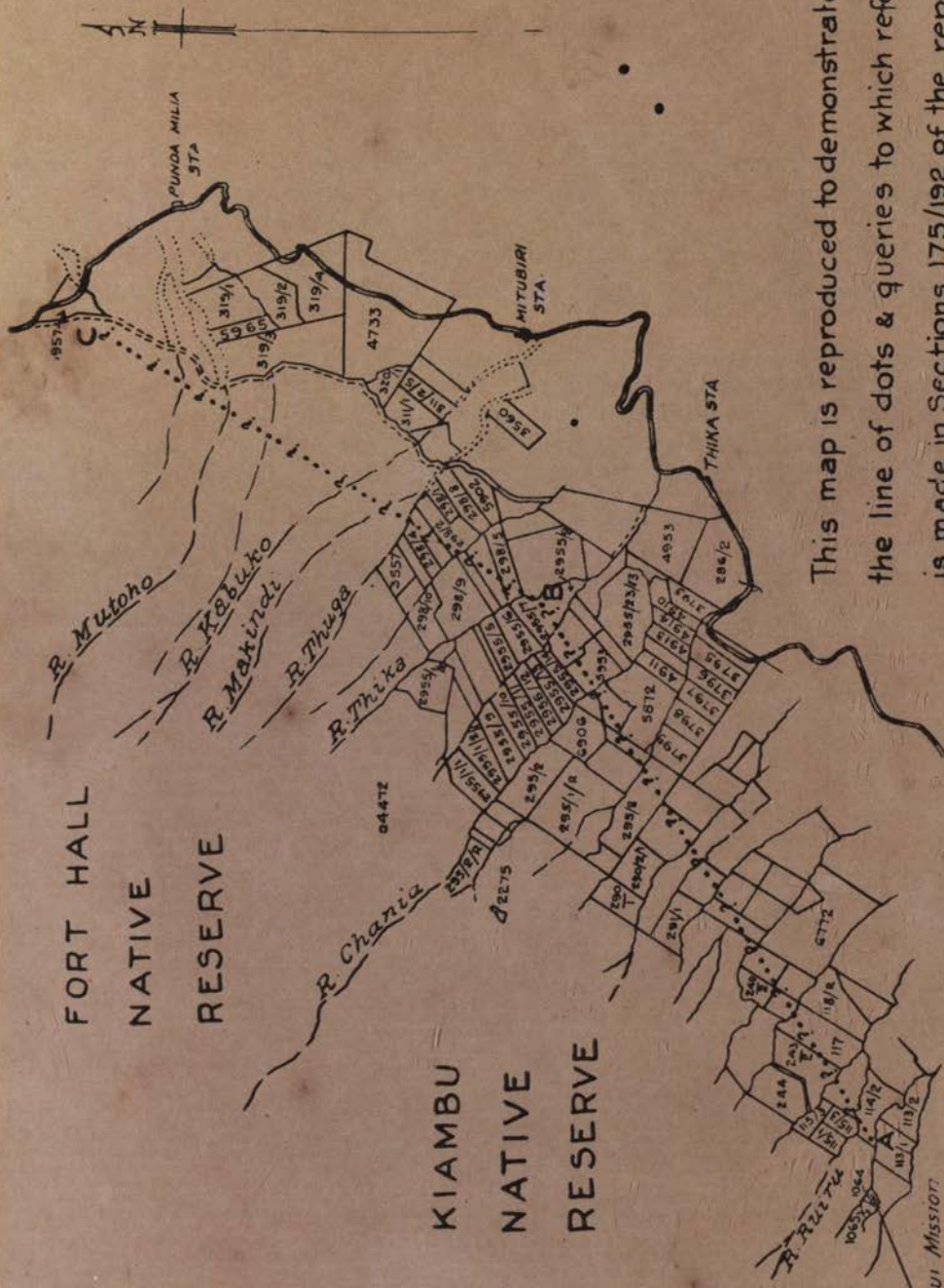
"I do not think it an over-wide statement."

174. Mr. H. R. Tate, speaking of 1902, states : "From Thika on into Nairobi there was never much cultivation", but he does not say that there was absolutely no cultivation or that the country was quite uninhabited. He rather conveys the impression that it was sparsely occupied. He says : "At Thika it was not densely populated", and he speaks of his mail runners being killed, apparently by Kamba raiders.

175. In view of the paucity of the facts revealed, it is difficult to suggest how the boundary of the land effectively occupied ought to be placed in this area. In most parts we have taken it to be coincident with the inner edge of the forest, but here there seems to have been no forest belt sufficient to form a recognizable frontier. Probably the best course is to select two points which can be roughly established and join them with a line of dots marked by queries, and then see how such a line fulfils the known conditions. These two points are :—

(a) A point one mile east of Kambui Mission, since Mr. Knapp in 1902 found the land to the eastward of that to have been only recently cleared of forest, and the stumps of the trees were still standing.

(b) A point two and three-quarter miles east of the point at which Count Teleki is shown to have camped on 21st September, 1887, as determined with as much accuracy as possible by the Survey Department from the information contained in the book. This point is found at the north-east corner of L.O. 2955/7.



This map is reproduced to demonstrate the line of dots & queries to which reference is made in Sections 175/192 of the report.

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Note.—The reason for fixing on two and three-quarter miles is that Von Hohnel wrote (Teleki, p. 330):—

“Our camp on the ridge was near the eastern frontier of Kikuyuland, and about from $2\frac{1}{2}$ to 3 miles from the wood, which seems to encircle the whole district.”

176. The line so set up runs at an average distance of some $3\frac{1}{2}$ miles west of the Railway, and the point where it crosses the Thika River is $4\frac{1}{2}$ miles above the Railway. This line is illustrated in the southern portion of the plan here following, and is marked A — B.

177. The claims made by the Kikuyu do not shed any light on the matter. They claim to have occupied the plains as well as the belt of forest or scrub, but they have adduced no evidence in support. One cannot, however, entirely discount the Kikuyu complaints that, when the farm boundary was made in this area, Government took away all the grazing land which lay eastward of the general limit of their dwellings. One could hardly expect them to be able to prove this by evidence. It is clear from the European evidence that their cattle did not commonly graze so far to the east as to be visible from the road, but the old road in this area ran at an average distance of nearly seven miles east of the present boundary of the reserve. There is a certain probability in the contention that, in demarcating the boundary between the Kikuyu and the area available for alienation as farms, Government had respect to Kikuyu dwellings and cultivation, but not to grazing land, and that they were actually in the habit of grazing their cattle considerably to the eastward. Prudence would obviously dictate that they should not graze them so far afield as to be a temptation to the Masai or Kamba, but as Dr. Boedeker has remarked, there was good visibility in this region and in the daytime, when the cattle were out, raiding parties could have been seen coming for miles. At all events it would be a begging of the question to assume that, because the farm line lies where it does, therefore it accurately marks the Kikuyu boundary. There seems to be no way of determining the matter except by an arbitrary process, and it appears that the line marked by the row of dots and queries is a fair representation of the limits to which the Kikuyu regularly used to graze their cattle, as opposed to intermittent and precarious grazing in which they may have occasionally indulged when the Masai or the Kamba were less aggressive than usual.

178. Mr. Fazan gives evidence of having, when District Commissioner of the Kiambu District, visited L.O. 295, and heard the statement of the native grievance about the areas known as the

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"80 acres" and the "300 acres" both of which are situated on the ridge between the Chania and Karimenu Rivers. On the 300 acres he was shown some roots of trees which were being dug up, and it was alleged that they were trees which had been used to mark a *githaka* boundary. He remembers also seeing some stumps which he considered to have been planted in a line to mark a boundary of some sort. The natives alleged, though without proof, that they used to water their cattle at the Chania and Karimenu Rivers. It will be noticed that the line of dots happens to pass through their point of juncture.

From the
Thika River to
Saba-Saba.

179. Von Hohnel records that Count Teleki's march on 22nd and 23rd September was parallel to the boundary wood at a distance of from $3\frac{1}{2}$ to $4\frac{1}{2}$ miles from it. His camp on the 23rd was at a height of 5,000 ft. near to a high hill which Count Teleki climbed in order to get a view of Mount Kenya. He estimated the height of the hill at some 2,300 ft. to 2,600 ft. above his camp. With the help of these details and Count Teleki's map the camp has been located as probably at a point a little short of the Thaba River and, if the edge of the boundary wood lay four miles to the east of it, we can fix a limit at about a mile to the south-west of Saba-Saba Station. If we join that point to the other point already fixed further to the south, we get the rough position of the inner edge of the boundary wood according to Count Teleki. If we compare this with the map illustrating Sir Alfred Mackinder's journey, we find that the line corresponds fairly closely with what is there shown as the limit of "cultivation with remnants of forest", the land to the east of it being shown as open "steppe."

180. If we set up this line for criticism by marking it with a line of dots and queries, we find that it runs at an average distance of about four miles west of the present railway, but only an average of about a mile west of the present road. It is the line marked B—C on the plan above.

181. This appears to agree well enough with the evidence given to the Commission. If it had lain much further to the east, Kikuyu occupation would have been observed by the witnesses who travelled by the old route, which according to Lord Cranworth (Evidence, p. 479) passed through Punda Milia. He took up land on L.O. 83, and visited it in 1906 and subsequent years. He states:—

"There was not a head of cattle, not a goat and not a native. They were gradually coming up from the west and gradually approaching Fort Hall . . . There were no signs of cultivation to anything like the extent or anything like as far as they go now, and no signs of occupation."

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182. Mr. E. B. Horne, speaking of 1904, states (Evidence, p. 585) :—

“Going south from the Maragua River, there was a little cultivation just before one came to the Thara, and thence onwards to Nairobi there was no cultivation and the country was given over to game. I have done a lot of shooting in this area from Fort Hall and the only cultivation I can remember was on both sides of the river near the Thara. I should add that it was flat country and the grass was very long and there may possibly have been a few *shambas* which I did not see. Also the natives were shy in those days and did not go near any road. I once did a *safari* from Punda Milia to the Ithanga Hills and I saw neither people nor cultivation.”

183. The evidence of these witnesses shows the conditions obtaining in 1904 and 1906, when the dread of the Masai had been largely removed. We may conclude that in 1895, when conditions were less settled and raids by Kamba or Masai were more frequent, the Kikuyu could have had no permanent use of the country beyond the line which we have set up. The more doubtful point is whether they had the permanent use of all the land inside it. Before we proceed to trace the boundary further north, this point must be decided in relation to the whole of the tentative line which we set up from a point one mile east of Kambui Mission to the north-east corner of L.O. 2,955/7 and thence to a point about a mile south-west of Saba-Saba Station.

184. The evidence which we have been able to obtain upon the subject is exceeding meagre. While we are convinced from the evidence of Captain Cowie and Mr. Harries that in 1904 the lands which have been alienated in this area were practically uninhabited and unused by any natives, we find a considerable degree of credibility in the native claims that they used to graze their cattle there before the famine. Definite proof of such an allegation can hardly be expected.

185. We consider that the line as set up represents what a fair-minded man would regard as an arbitrary line drawn without favour on the general probabilities of the position as it was before the famine. If we accept it as such, the question then arises whether any reparation is due to the Kikuyu for the loss of an area which they abandoned in the famine and to which they had not returned in any effective strength when the land was alienated about six or seven years afterwards.

186. It is noteworthy that the claims in this area, if one excludes one or two which are frivolous on the face of them, tend to be made on behalf of the main clans of the Kikuyu rather than for particular family groups. This appears to indicate that little in

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the way of private rights had been asserted in this part and that the claims related to grazing grounds held communally by the clans. It is therefore somewhat difficult to speak of a *mens revertendi* when the land was left, since no common design can well be attributed to a clan. The only way in which one can judge of their intentions is by their actions, and in so far as we have knowledge of the facts it seems that when the native population, which had largely gone back to the Fort Hall District in the famine, began to return again south across the Chania, many of the groups sought fresh land by cutting and burning their way into the forest westwards instead of returning to the places where they had been. We have made very substantial allowances (altogether some 154 square miles) for land which we have held to have been admissibly acquired by the Kikuyu in this way, and if we hold that, while additions must be allowed to the 1895 boundary because of fresh clearings, no subtractions must be made for land abandoned, we should be weighing the scales unduly in favour of the Kikuyu. This observation has all the more force when we reflect that the population had been greatly reduced in the interval, so that a contraction rather than an expansion of effectively occupied territory was to be expected.

187. In view therefore of the known fact that there was this migration westward and southward, we shall not hold that there was anything like a settled design on the part of natives who left lands on the eastern border in the famine to return to those lands, but it is probable that many of them did, in fact, move permanently elsewhere, and had already done so before the lands which they had left were alienated.

188. In the block immediately north of the Chania it is doubtful whether there was much occupation even before the famine. Von Hohnel recorded that it was left vacant for fear of slave raids and, though this may have been only a temporary condition, there is no reason to believe that it was otherwise than very sparsely occupied at any time.

189. For these reasons, although in general we have recommended full compensation, value for value, for acreage lost to the Kikuyu, we consider that there would be no justice in such a solution in this particular area, but we find that the fairest thing is to regard the matter as follows:—

190. In the Ngewa-Chania block there are 17.10 square miles and in the block immediately north of the Chania there are 15.43 square miles of land which were “unequivocal Kikuyu country”

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in 1895, and which were alienated as farms at various dates between 1904 and 1908. But in the interval between 1895 and 1904 the famine caused the abandonment of the land. In some cases the abandonment was temporary in the sense that families which left the land would have reoccupied it if it had not been alienated, and in other cases it was permanent in that there were families who voluntarily went and cleared fresh land elsewhere and never would have reoccupied it (to say nothing of the families which had died out altogether). The fairest basis, therefore, is half and half. Let it be assumed that half the land occupied by these blocks (i.e. 16.26 square miles out of a total of 32.53 square miles) was land which had been permanently abandoned by the previous occupiers when the land was alienated, and that the other half had only temporarily been abandoned and that a *mens revertendi* existed to which regard must be had.

191. This is an arbitrary view of the matter but, in our opinion, fair to all parties, and we therefore recommend that for purposes of compensation these two blocks count only as 16.27 square miles.

192. Subject to these provisions, we consider that the tentative line which we set up may be accepted.

193. We now come to the somewhat controversial area between Saba-Saba and the Maragua. The map of the reserve as it stands at present shows a peninsula of farms jutting out into the reserve in such a way as to suggest the suspicion that it may have once formed part of native land. This is the area of the Saba-Saba farms.

From Saba-Saba to Fort Hall.

194. They were surveyed in 1908 by Mr. F. H. Jordan, who has furnished a memorandum to the Commission stating that at that time there were, to the best of Mr. Jordan's knowledge and belief, only about 82 huts in the area surveyed by him, of which about 50 were "west of Karua."

195. Karua itself, and for nearly a mile west of it, is in the reserve, and this must be the locality he means. This leaves only 32 huts in the farm area, and of these about 20 were found on L.O. 326, which has been declared native reserve, leaving only about 12 huts altogether on the alienated land.

Although Mr. Jordan found about twenty huts on L.O. 326 in 1908, Mr. Seth Smith only found about six huts there in 1906 (Evidence, p. 937), and believes that there was only one Kikuyu hut on L.O. 325 (Saba-Saba Estate).

L.O. 323, which was included in Mr. Jordan's survey, is shown on his plan as being in the name of "Hausburg, Cowen, Swift and Rutherford." Its boundary is about three miles east

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of the Railway and about $3\frac{3}{4}$ miles east of the present road. Mr. Hausburg has told us in evidence, relating to 1899 :—

“The country round Punda Milia was full of game. Taking the old native track, which is very nearly the same to-day as it was then, there was no cultivation, so far as I remember, to the east of it at all. On the west side there was a certain amount, increasing as you go into the foot-hills towards Fort Hall.”

196. Mr. Rutherford's evidence relating to 1904 confirms this description. He informs us that he had been “told that the reason why there were no natives there was because the Kamba came and fought there against the Kikuyu near the border of their country.”

197. Mr. H. R. Tate, who made his first *safari* from Fort Hall to Nairobi in 1902, stated in his evidence :—

“There was definitely cultivation for about fifteen miles south of Fort Hall . . . In the next stretch of march we came to Punda Milia, where Swift and Rutherford now are. There was no cultivation there.”

198. These extracts suggest the conclusion that even as late as 1902 there was very little, if any, cultivation to the east of the road until one crossed the Maragua and, since numerous witnesses have stated that the Kikuyu gradually advanced their frontier eastwards when the menace of the Masai and the Kamba was removed by the establishment of settled administration, we might reasonably conclude that the boundary in 1895 lay considerably further to the west, and that the Saba-Saba farms were a sort of no-man's-land and a battle ground between tribes. Mr. Vidal, the District Commissioner, goes some way to support this view in the following passage in his “Historical Memorandum” (Evidence, p. 576).

“During the period preceding the introduction of Government, and even for some years after, there was a considerable amount of border warfare with the Masai on the one hand and the Kamba on the other. For this reason the Kikuyu were unable to remain in settled occupation of outlying areas, and any advance they might make was often followed by a speedy retirement.”

Nevertheless, he appears, in his evidence, to exclude the Saba-Saba farm area from the scope of these remarks. He states :—

“This (Saba-Saba, Limited) is not a buffer state. It is, in my opinion, the area most likely to have been occupied by the Kikuyu, at any rate intermittently, before the famine. I think it is a reasonable supposition that all the land which is now Saba-Saba Limited was occupied by the Kikuyu before

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it was alienated, because there is native occupation on both sides of it. It is probable, I think, that the whole of this estate was occupied by the Kikuyu."

Mr. Vidal had not then seen Mr. Jordan's memorandum, showing the state of the case when he surveyed the land in 1908.

199. In regard to the country eastwards, the evidence of Mr. John Boyes and of Mr. Henry Tarlton is of interest:—

Mr. John Boyes (Evidence, p. 725):—

"After leaving Fort Hall we followed the south bank of the Tana River to Kitui. The whole of that plain was vacant. I met nobody, no other tribes, no one the whole way, till we met the first Kamba a few miles west of Kitui."

Mr. Henry Tarlton (Evidence, pp. 738 and 739):—

Relating to 1906.—"At the waterfall above where the Maragua joins the Kiruruma there were a few native *shambas* at some distance from the river. These were, so far as I remember, the only *shambas* which I had seen since crossing the Maragua on the Fort Hall road, and after them I did not see any more at all on the whole *safari*, though I went right over the Yatta as far as the fly-belt."

200. We find no evidence to show that before 1895 there was any permanent Kikuyu occupation of any land to the east of the present road between Saba-Saba and the Maragua. It will on the whole be a generous interpretation of the evidence towards the Kikuyu if we take the limit of effective Kikuyu occupation to have reached up to the road and the limit of intermittent occupation by occasional grazing to have stretched two miles beyond it.

201. There appears to be no doubt that after the Maragua had been crossed, cultivation was found on both sides of the road. This is attested by practically all the witnesses. The question is how far down the river it went. Down the Maragua.

202. There was a line defined by Mr. Northcote about 1913, which is known as the Northcote line. It fixed what was considered to be the limit of Kikuyu penetration into Mwea. Its southern extremity was at the point where the Maragua flows into the Sagana to form the Tana, and it may be assumed that at all events by that date the Kikuyu were in occupation of all the land down the north bank of the Maragua to the point of confluence. From Mr. Northcote's report, however, it is obvious that the nature of the occupation was sparse, as far as huts or cultivation was concerned, although there may have been large herds of cattle at some seasons of the year.

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203. There is no evidence at all to show whether the Kikuyu reached as far as this as early as 1895. The menace of unexpected hostile attack would be slight in this area, since it was protected by two considerable rivers.

Mwea.

204. Mr. Tarlton's evidence of the condition of affairs in 1906 is interesting:—

“In Mwea the natives were cultivating on the red ground, but there were old burnt kraals lower down than that, but not as low as Boinjuki, not by some two hours' march or more. At that time they had no cattle, and I was told that their cattle had been removed by Government for some reason. There had been a punitive expedition.”

In 1927 the Kikuyu began to raise an agitation about this line, and claimed that their ancient boundaries reached to the junction of the Thiba and the Tana. Mr. Champion, then District Commissioner, South Nyeri, stated that he personally saw twenty-two villages south of the line and 1,850 cattle. In 1928 the District Officer at Keruguya stated that the Kikuyu cattle were taken as far as Boinjuki, where there is a well-used salt-lick. This point is nearly ten miles below the Northcote line. From there the country continues open until after Nduni Hill is passed, but becomes bush-covered as the confluence of the rivers is approached.

205. That being as far as the evidence takes us, an arbitrary line is necessary if we are to be in a position to make any “Profit and Loss” account of the Kikuyu lands. The history indicates a progressive advance south-eastwards, and it is probable that in 1895 the Kikuyu had not yet penetrated to the point where Mr. Northcote set his line in 1913. But we may perhaps stretch a point in their favour and find, in order to form a basis of assessment, that they had reached this point, to the extent that they were regularly grazing their cattle there. It is also possible that they sometimes drove them to the salt lick at Boinjuki beyond the Northcote line, but in other respects it is unlikely that they made any use of that area in 1895. By 1902 we are prepared to believe that they were making intermittent use of it, and in so concluding we rely largely on the evidence of Mr. Henry Tarlton (Evidence, pp. 737 to 740). But the weight of the evidence is against the supposition that the use made of the area between the Northcote line and Boinjuki was more than intermittent and partial. Therefore, in making up the “Profit and Loss” account we have decided to show this area partly as “admissibly acquired” by use and partly as given by Government, and the proportion on which we have decided is half and half. Below Boinjuki to the junction of the Thiba and Tana rivers we find that there was no occupation by

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Kikuyu, and this area must rank wholly as given by Government. The Kikuyu have been allowed to occupy it and the gift has been approved by the Governor in Council.

The extent of the land in the "half and half" area is 62.90 square miles, of which 31.45 will rank as admissibly acquired and 31.45 as given. The extent of the land in the area below Boinjuki, i.e., the lower part of Mwea, is 143 square miles and this will rank wholly as given, making in all 174.45 square miles which rank as given.

206. We need not concern ourselves particularly with the boundary from Mwea northwards, seeing that it is simply the administrative boundary between the Kikuyu and the Embu. The Kichugu Division used to be counted as part of the Embu District, but in 1922 it was transferred to Nyeri and thereafter ranked as Kikuyu. This may be counted as an access of strength in a political sense to the extent that the tribe gained something in numbers and prestige, but can hardly be called an addition of territory in an agrarian sense, since it was not a gift of land to the Kikuyu.

From Mwea
Northward-

207. In order not to complicate the issue unnecessarily it is therefore better to show the present boundary, the Rupingazi, as if it had always been the boundary between the Kikuyu and the Embu. This boundary begins at the point where the Kii River (which afterwards becomes the Rupingazi) emerges from Mount Kenya Forest Reserve and goes south by this river to the Thiba.

208. It is quite impossible to say how much the natives have cut back the forest boundary all along the north part of the Keruguya Sub-District between 1895 and the present. Since the natives here are not so crowded as in the Nyeri District proper, and have ample land in Mwea for grazing, there is a probability that they have not destroyed the forest quite so ruthlessly. Nevertheless, one mile would probably be a very conservative estimate.

The Northern
Boundary back
to Nyeri.

209. The only other matter which requires mention is the position of the former location of Wangombe, the father of Headman Nderi, who has written a memorandum to the Commission. It is there stated that Wangombe was a chief living on the borders of the Kikuyu country near a place called Thathwa, which is approximately the site of Nyeri Railway Station, and that, a little before Nyeri Township was founded, he offered Thathwa to Government as a site for the township, as being a convenient site near the Kikuyu-Masai border and near the Amboni River.

Wangombe's
former
Location.

210. Soon afterwards Wangombe died and is said to have left a dying instruction to his son Nderi to move to a place called Kamaha between the Muringato and Mwiga Rivers, where he is alleged to have had his *ngundu* (right-holding). Nderi moved to

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Kamaha and remained there nine years with all his followers and his flocks. He was then moved to his present location of Kamakwa, and complains that he had no proper footing there, since it was the right-holding of another man, named Ngatia wa Mahenia.

211. In considering what the boundary was in 1895 we are not concerned with these later developments, but only with the situation as it then stood, when Wangombe is stated to have lived near Thathwa and to have had a right-holding between the Mwiga and the Muringato.

212. There seems to be no doubt that the place where Wangombe's village stood was on the south side of Niana Hill. It is so shown in the map illustrating Sir Alfred Mackinder's route. And it is quite clear from Mr. John Boyes' account that it was not actually in the forest, but on those slopes of the hill which commanded a good view southward. He writes in his book (page 146):—

“Wangombe's kraal was right at the top of a smaller mountain which rises at the foot of Mount Kenya, and from this vantage ground a splendid view could be obtained of the country for many miles around . . . Spread out as far as the eye could reach was a panoramic view of the Kikuyu country through which I had travelled.”

Niana Hill is just inside the gazetted forest reserve, being situated between the points marked B2 and B3 in the sketch on page 4 of the evidence. Since the boundary of the forest reserve followed the actual forest edge very closely, it appears clear that Wangombe was living on the very edge of his own clearings and that the area in which he had effectively established himself lay between there and Thathwa, which is the approximate site of Nyeri Railway Station. He was, by general report, a powerful chief, as Kikuyu chiefs went in those days, and his followers probably numbered some thousands (cf., John Boyes, pp. 158, 159), and it is probable that the whole area now in the reserve between these two points was effectively occupied by them. But there seems to be no evidence that any significant portion of their occupied territory was cut off when the boundary was made.

213. The place to which Nderi removed at his father's dying request was between the Mwega and Muringato Rivers, and undoubtedly outside the reserve as it now exists. But no argument has been advanced to show that the locality was in any real sense a right-holding. Evidence already cited shows that it was in the forest belt. It was near Mathari, “the place of dividing”, and reference may again be made to the file of Nyeri Revision Case No. 23/29, which shows the conditions prevailing in the neighbourhood. There is no evidence of Wangombe having ever established

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a right to his *ngundu* in this area by means of clearing and use. and it is admitted that he was not living there. There is clearly no ground for showing this as unequivocal Kikuyu territory in 1895.

214. With the possible exception of the southern and eastern sides of Niana Hill, there appears to be no ground for claiming that any of the land now contained in the Mount Kenya Forest Reserve was ever effectively occupied Kikuyu territory, and the same thing applies to the northern boundary of the reserve generally.

A General
Comment
on the
Boundaries.

214. (a) We have now completed our survey of the Kikuyu boundaries. The results, summarized in terms of acres, will be found in the next chapter and are illustrated in the coloured map which follows it. We wish, in this place to make some general comments.

The 1895
Boundary.

The area shown with a plain yellow background and surrounded by a deep yellow line is the area which we have found to have been "unequivocal Kikuyu territory" in 1895. When it is realized that, except in a very few places where some sort of an agreement existed, the limits of the Kikuyu country at that date were entirely undefined, it will be understood that our decision has of necessity been arbitrary. We have attempted to draw a line based on such evidence as is available and offering as fair an interpretation as is possible at this date.

In a few instances, after our line had been drawn, further consideration has suggested to us that perhaps we have been a little over-generous in one quarter and perhaps not sufficiently generous in another, and we are inclined to think it probable that our drawing of the line in the neighbourhood of Limuru Station is a little over-generous to the Kikuyu, while in the neighbourhood of Kambui Mission Station we have not perhaps allowed as much to the Kikuyu as we might have done. Further north, in the Ngewa-Chania area, we think that we have again erred on the side of generosity. But, taken all in all, we regard the boundary as fair, though if anything on the generous side.

In reaching our decision our principal sources of information have been: books, maps and records; the evidence of European officials and non-officials whose experience of the country is of long standing; and the native evidence. Our conclusion in regard to the evidence given by the Kikuyu is that what they claim and what they really occupied are two very different things, and we say advisedly that, with few exceptions, very little reliance can be placed on their statements. As an illustration of the readiness with which the Kikuyu commit themselves to wildly inaccurate statements without making any attempt to ascertain the true facts, we mention that two representatives of the Kikuyu Central Association giving evidence before us at Kiambu complained that the

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Kikuyu were the only people who were required to take an oath before they gave their evidence to the Commission, the fact being that every witness who has appeared before us in Kenya has been required to take an oath.

In contra-distinction to the Kikuyu we consider that great reliance can be placed on the evidence of the old Swahili caravan porters, which has been taken in different places, as to conditions at the end of the last, and the beginning of the present century; we were much impressed by the manner in which they gave their evidence, with their wonderful memory of the old days, their lack of prejudice and the general consistency of their evidence, although given at different times and places and without knowledge of what had been previously said.

The 1902
Boundary and
alter.

Areas barred yellow on the map purport to show land "admissibly acquired" by the Kikuyu after 1895 by a process of clearing and first use. In a general sense we have considered these admissible extensions as having taken place between 1895 and 1902 but, especially along the boundary of the Aberdares, we have counted in such additional clearing as had taken place up to the time when the forest boundary was demarcated in 1907. The position before 1902 was that there was no Forest Department and, as before stated, we have agreed that acquisition by first clearing and use was admissible in any areas in which Forest Officers were actively employed in enforcing rules under the Forest Ordinance. On the Aberdare boundary we have taken the date of the forest demarcation of 1907 to be the date at which further acquisition by clearing and use ceased to be admissible.

CHAPTER VI.

THE PROFIT AND LOSS ACCOUNT.

215. It should be clear from the foregoing chapters that, while our first care has been to ascertain the boundaries as they existed when the Protectorate was declared, we have not denied to the Kikuyu the right to count as Kikuyu country land admissibly acquired by them by a process of clearing and first use between that date and 1902. But we have required to be satisfied that the clearing was sufficiently intensive to represent an extension of the tribal frontier rather than the isolated effort of a few venturesome individuals, and in the second place that the extension did not infringe any general order of Government made by proclamation or formal notice, which was being effectively enforced.

216. Our findings are illustrated in the maps which follow this chapter. The first shows the situation as it exists to-day, and is for purpose of comparison only. The second shows :—

(1) Areas coloured plain yellow, which represent land which was unequivocal Kikuyu territory in 1895 and is still in Kikuyu occupation : 1,519·13 square miles.

(2) Areas marked in red hatching over a yellow background, representing land which was Kikuyu territory in 1895, but was subsequently alienated. After reckoning in a few small mission stations in the reserve which are held on freehold but which are too small to be marked, we find the total of this area to be 120·64 square miles, and for the purpose of the table which follows, it has been split thus :—

Taken by Government	..	..	104·38
Lost by abandonment	..	..	16·26 (<i>See</i> Section 190)
Total	..		120·64

Note.—The total of this and the previous category (i.e., 1519·13 plus 120·64) make up the total area which we find to have been “unequivocal Kikuyu territory” in 1895—approximately 1,640 square miles.

(3) Areas barred yellow which represent land admissibly acquired by the Kikuyu between 1895 and 1902 by a process of clearing and first use, and conceivably in some cases by purchase added to clearing and use. This area is 111·17 square miles.

(4) Areas in the Kiambu District marked in yellow and blue parallel lines which represent land given by Government but in which the Kikuyu had already gained a footing by partial clearing and use before it was given by Government. The part of this land ranking as admissibly acquired by the Kikuyu is 1,750 acres, or, 2·74 square miles. And the part

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ranking as given by Government is 7,840 acres, or, 12.25 square miles. The argument appears in sections 118 to 128 above.

(5) Area marked in red and yellow cross-hatching on a plain background representing land admissibly acquired by the Kikuyu by clearing and use, but afterwards taken away and alienated. The area is four square miles.

(6) Areas marked in red and yellow cross-hatching on a green background, representing land in which the Kikuyu had won a footing in 1902, but which was still largely unoccupied and bush-covered, and was subsequently alienated by Government. The total of these areas is 4.50 square miles, and the proportion in Kikuyu occupation has been computed as one-quarter. The amount of Kikuyu territory involved is therefore shown as 1.12 square miles (*vide* section 137).

(7) Areas marked in blue hatching representing land given by Government. The items are: Ndeiya, 73.76 square miles (*vide* sections 139-141); the lower part of Mwea, 143 square miles (*vide* section 205); and two small blocks south of Nairobi River, 1.24 square miles (*vide* sections 154 and 155). Total, 218 square miles.

(8) Two areas cross-hatched yellow and blue:—

(a) The upper part of Mwea, 62.90 square miles, of which half (31.45 square miles) ranks as given and half as admissibly acquired. (*Vide* sections 204 and 205.)

(b) The cross-hatched area south of the Nairobi River, 7.60 square miles, of which half (3.80 square miles) ranks as given and half as admissibly acquired. (*Vide* section 154.)

The total of these areas is 70.50 square miles, of which half (35.25) ranks as given and half as admissibly acquired.

217. The account may, therefore, be cast as under:—

Legitimate Kikuyu Territory.

(as defined below, Note 1)

	<i>Square Miles</i>
Under Category I	1,519.13
" " II	120.64
" " III	111.17
" " IV	2.74
" " V	4.00
" " VI	1.12
" " VIII	35.25
	1794.05
<i>Added by Government.</i>	
Under Category IV	12.25
" " V	218.00
" " VIII	35.25
	265.50
	2,059.55

Taken away by Government.

	<i>Square Miles</i>
Under Category II	104.38
" " V	4.00
" " VI	1.12
	109.50
<i>Lost by Abandonment.</i>	
Under Category II	16.26
	125.76
<i>Balance of Kikuyu Territory remaining</i>	
	1,933.79

2,059.55

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"THE PROFIT AND LOSS ACCOUNT"

Note 1.—The expression "Legitimate Kikuyu Territory" is to be understood as covering : (a) land which was effectively Kikuyu territory when the Protectorate was declared ; and (b) land admissibly acquired by the Kikuyu since that date until 1902 by a process of first clearing and use. The expression is merely used for convenience, and is not intended to imply that "land added by Government" did not equally become legitimate Kikuyu territory. Legitimate acquisition of fresh land by a process of first clearing and use is held by us to have ceased in 1902 in areas in which officers of the Forest Department were actively employed and in other places after definite areas were demarcated as forest reserve.

The deep yellow line on the map shows the limits of legitimate Kikuyu territory in 1895, but all the area between it and the broken green line was mainly forest or scrub covered in 1895, and to a considerable extent was still so covered in 1902.

The total of 1,794.05 square miles is somewhat greater than the area which we have found to have been Kikuyu territory either in 1895 or in 1902 because in 1895 the items under categories (3), (4), (5), (6) and (8) had not yet been acquired, while by 1902 an area of 16.26 square miles had been lost by abandonment as shown under category (4). This figure is not significant for the purpose of assessing the Profit and Loss Account, which will be balanced on the valuations of the land "added by Government" and "taken away by Government."

For the purpose of working out the population density in 1902 in section 63 above the extent of Kikuyu territory has been shown as 1,778 square miles (i.e., 1,794 less sixteen abandoned).

Note 2.—In the above table three assumptions have been made which are true as regards the facts as existing on the land, but are anticipations as far as gazetting is concerned.

- (i) The gift of Mwea to the Kikuyu has been approved by the Governor in Council, but owing to legal difficulties in conveyance the gazetting has not yet been effected.
- (ii) L.O. 4,450, which is included in category (4), was originally set aside to be forest reserve, but was abandoned by the Forest Department for the reason that it was not required for afforestation, and also because there was considerable native occupation in it. Major Gray, when District Commissioner, Kiambu in 1927 informed the natives that they would be allowed to remain, and they have been in undisturbed possession ever since. It is now occupied and cultivated as intensively as the rest of the reserve. Since we do not conceive that there is any intention of disturbing these natives, we have assumed

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that this position only awaits regularization by gazette-ment, and for the purpose of our table we have reckoned it as if it was already part of the reserve.

- (iii) Four hundred acres north of L.O. 4,450 have been surrendered by the Africa Inland Mission for the accommodation of natives who were resident on the estate. The lease has been amended accordingly; the land is now in the occupation of the natives, but owing to legal difficulties of conveyance it has not yet been added to the reserve. In the above table it is included in category (4).

Note 3.—In addition to these areas L.O. 160, Tigoni, has also been included in the "Balance of Kikuyu territory remaining." It is part of the area found by us to have been unequivocal Kikuyu territory. Although it is not part of the gazetted Native Reserve, it is in permissive native occupation, and has therefore not been shown as "taken away by Government"; therefore it is part of the balance of the account. Proposals as to its future destiny are made in Chapter X.

Note 4.—The balance of 1,933·79 square miles is made up as follows :—

	<i>Square Miles.</i>
(i) Area of the present Native Reserve as gazetted	1,725·00
(ii) Mwea Area	205·00
(iii) L.O. 4,450	0·69
(iv) Land surrendered by the Africa Inland Mission	0·62
(v) Tigoni	1·48
Total ...	<u>1,933·79</u>

218. The analysis of these figures, when presented by districts, is as follows :—

Districts	Land given by Government Sq. Miles	Land taken by Government Sq. Miles	Net gain Sq. Miles	Net loss Sq. Miles
Nyeri District ..	174·55	6·95	167·60	..
Fort Hall District	..	9·14	..	9·14
Kiambu District ..	90·95	93·41	..	2·46
<i>Total</i> ..	265·50	109·50	156 balance of gain	

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219. While the above analysis is set down for the general interest which it possesses, we do not propose to concern ourselves in this chapter with any other considerations than a settlement with the tribe at large. The question whether any settlement which we find to be just to the tribe as a whole requires modification in the interests of particular districts or individuals, is held over to be considered in Chapter IX, in which we give our conclusions on the settlement of private rights, and it will be found that a certain degree of modification is recommended on this account.

Modification
required to
meet Private
and Sectional
Interests.

220. Another important consideration which will affect the account is the question whether and to what extent exceptions can be made to the general recommendation of equivalent compensation in land in special cases, as for instance when the land taken by Government has been developed as a mission or in some other manner directly beneficial to the natives. This is a matter which will be covered in Chapter X, which will also deal with the question of exchange and other adjustments.

Modifications
required to
meet Special
Cases.

221. It is clear to us that the basis of valuation must be the value which the land possesses for natives. But the native viewpoint and their agricultural and pastoral practice are changing and the question arises whether we should consider the value which the land possessed for the Kikuyu at the time of the alienations or the value which it would have for them now, or the value which it will have for them in time to come. The importance of the point is easily illustrated by considering the Limuru farm area. When the alienations occurred this locality was not much favoured by natives, since it was too cold and misty to be very suitable for the crops which they were accustomed to grow. It would have ranked in their eyes then as low average land. In later years many have learnt to plant European potatoes and other crops more suitable to such a climate and they would regard this land as good average for Kikuyu country.

The Basis of
Valuation.

222. In the bare justice of the matter we consider that we ought to regard the present. The question of what the natives have been or what they may one day become does not appear to concern this part of our argument and we have to deal with them as they are. In the economic sections of our Report, when we are considering the needs of natives, we shall have to take account of future vicissitudes.

223. In making our valuation, therefore, we shall consider the comparative values of land in reference to the uses to which the natives put such land to-day.

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(a) The land taken away by Government comprises :—

	<i>Sq. Miles</i>
1. The part of the Kikuyu Station block which is marked in red hatching on a yellow background	3.48
2. The part of the Kikuyu Station block which is cross-hatched yellow and red on a plain background	4.00
3. The block from Kabete to Kiambu and including Fort Smith	23.00
4. The Kamiti River block	7.72
5. The blocks between the Ngewa and Chania Rivers (17.10 square miles) and	16.27
6. The block north of the Chania (15.43 square miles)	
The total of these two areas is 32.53 square miles, of which we have agreed to regard half as lost by abandonment and half (16.27 square miles) as taken by Government (<i>vide</i> section 190)	
7. That part of the Limuru farm block which is hatched in red on a yellow background	45.90
8. The western end of the Limuru farm block and land along the Railway near Muguga, marked in red and yellow cross-hatchings on a green background. This land is 4.50 square miles, of which we have agreed to regard 1.12 square miles as Kikuyu land taken away by Government (<i>vide</i> section 137)	1.12
9. L.O. 4961, an island of unalienated Crown land in the Reserve near Saba Saba	1.05
10. The block near Nyeri	6.80
11. Mission "islands" in the Reserve (<i>vide</i> Appendix No. 3)	0.16
<i>Total</i>	109.50

With very slight variations, all the land can be regarded as being, for native purposes, good agricultural land, equal to the average for Kiambu Native Reserve.

(b) The land which ranks as given comprises :—

	<i>Sq. Miles</i>
1. The lower part of Mwea (<i>vide</i> section 205)	143.00
2. Part of the upper part of Mwea (<i>vide</i> section 205)	31.45
3. Ndeiya (<i>vide</i> section 139)	73.76
4. Part of the land now forming the native reserves of Lari, Ngarariga, Kithirioni and Mukoma's and the whole of L.O. 4450 and L.O. 388/1 (<i>vide</i> section 123)	12.25
5. Part of the land now forming the native reserve south of the Nairobi River (i.e. half the area cross-hatched yellow and blue). (<i>Vide</i> section 154)	3.80
6. Two blocks hatched blue, south of the Nairobi River (<i>vide</i> section 155)	1.24
<i>Total</i>	265.50

(VIDE OFFICIAL GAZETTE 13TH OCTOBER 1926)

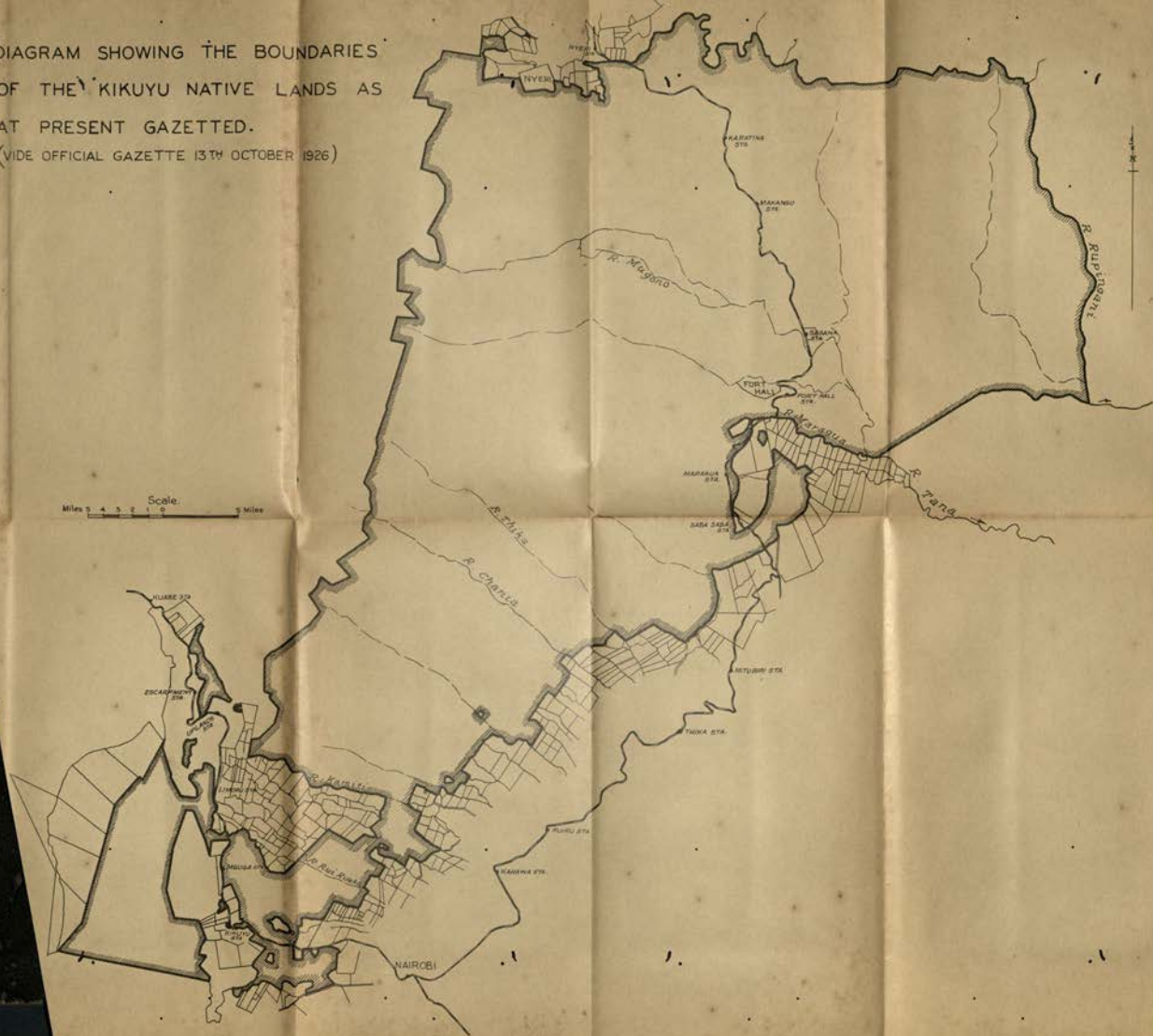


DIAGRAM SHOWING THE HISTORY
OF THE KIKUYU NATIVE LANDS
IN THE KIAMBU, FORT HALL
& NYERI AREAS.



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224. The details of our valuation of these areas have been set down in Appendix No. 4. The result of it is that we have assessed the total value of these 265.50 square miles to be equal in exchange value to 79 square miles of good agricultural land of the Kiambu average.

225. It therefore appears that, so far as our inquiry has carried us at present, the balance of loss sustained by the Kikuyu is about 30½ square miles of good agricultural land or about 19,520 acres. But the modifications which we shall have to recommend in consideration of private claims, exchanges, and special cases will be very considerable, and this chapter has only been written in order to summarize some preliminary calculations before proceeding to consider the nature and effect of these modifications, and the final account will not be balanced until Chapter XI.

226. The first map which follows this chapter is of the Kikuyu Native Reserve as now proclaimed and is self-explanatory. The second map illustrates the Profit and Loss Account as balanced in this chapter. The Roman numerals shown in the map "reference" relate to the categories shown in section 216. The numbers marked in Arabic figures in black refer to the categories of land taken away as shown in section 223 (a) and the numbers marked in Arabic figures in red refer to the categories of land added as shown in section 223 (b).

A Note of
Explanation of
the Maps
which follow
this Chapter.

227. The further areas which we shall recommend to be added to balance the account will be shown in a third map which follows page 152.

CHAPTER VII.

AN EXAMINATION OF PRIVATE RIGHTS AND CLAIMS—(PART 1).

THE HISTORICAL BASIS.

228. This chapter will be devoted to an examination of the nature of private land rights among the Kikuyu, in so far as they affect the issue with which we have to deal. The point at issue is whether the Kikuyu claims of right can be equitably settled by a simple squaring of the Profit and Loss Account summarized in the last chapter, making block additions equivalent to the balance of loss. If this is done, will it fulfil all the requirements of an equitable settlement, or is it open to the objection that the Kikuyu did not hold land as a tribe, but as individuals or family-groups, who might not be adequately compensated for loss individually sustained by a simple addition of land to the tribe as a whole? The first essential in approaching the question is a just appreciation of the facts.

229. In the present survey we shall concern ourselves chiefly with the Kiambu District on account of the greater complexity of its problems, and our findings will be based upon the evidence and on the documents to which we have had access.

230. By far the most important document on this subject is the report of the Committee of 1929 on Native Land Tenure in Kikuyu Province. It has not been possible for us, during the time at our command, to conduct a general inquiry into the Kikuyu system of land tenure and we therefore accept that report as the most authoritative document available, and no cause has been revealed why we should doubt its main conclusions. But there are certain aspects of the matter into which it did not concern that Committee to conduct so complete an investigation as will be necessary for the purposes of our Report. One of these is in connexion with the alleged sales of land by the Dorobo.

231. The 1929 Committee was only concerned to investigate the system or systems of land tenure prevailing and to make recommendations. Having satisfied themselves that the system of tenure in southern Kikuyu was based on a tradition of purchase from the Dorobo, and that transactions had taken place which sufficiently resembled a purchase to provide a substratum of fact for the tradition, they set themselves to examine whether the system, so based, could be developed into a workable method of land tenure for the

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tribe. Beyond that point they were not concerned to investigate the exact truth of the alleged sales. This is made clear in section 10 of Chapter 1 of their report, in which they write :—

“We need not examine the exact implication of the claim that they “bought the Dorobo out.” It is at least certain that payments were made, and that Kikuyu families are the undisputed successors in the occupation of areas over which Dorobo families once hunted. This, which is all that is important to our purpose, is common ground.”

232. This Commission is differently placed. Statements have been made by nearly 200 claimants purporting to represent about 350 *mbari* or family groups, that the founders of those groups bought land as private estates from Dorobo, of which they allege that Government has deprived them without adequate compensation. The tribe as a whole has asked in *baraza* that any compensation which may be granted to it should take the form of land, and we have to decide whether it is just or practicable to recommend that any land which might be added to the reserve on that account should be devoted to the accommodation of the particular *mbari* which have been dispossessed.

233. The issues in the question appear to be :—

- (i) Were payments made to the Dorobo? If so, when? And what, in general, were the amounts?
- (ii) What was the nature, intention and effect of these payments?
- (iii) To what extent had the “githaka system” developed at the time when the alienation of which the Kikuyu complain took place?

234. In view of the fact that so many family-groups have stated that they bought land from the Dorobo, and in most cases have supplied details of the payment down to the last pot of honey, it may seem strange that the answer should be in doubt. But the majority of the claims are so wild and extravagant, and frequently so conflicting, that not even the Kikuyu could criticize us for requiring substantiation from other sources before we affirm as a fact that any practice of making such payments existed. To this end we have caused a search to be made among the records of “githaka” cases at Kiambu, and frequent references to payments to Dorobo have been found. But in a considerable proportion of them there is some complicating circumstance, such as the marriage of a girl or an adoption ceremony or the payment of blood-money for a man slain, so that it is difficult to say whether any payments which may have been made were in respect of land or in respect of these other circumstances. There are, however, several cases in which both parties have agreed that a sale took place.

Were
Payments
made to the
Dorobo?

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235. It does not, of course, follow that the payments were made because the parties have agreed to say so; still less that they amounted to a purchase of land. That may be only an interpretation which they have put upon obscure happenings which took place before they were born.

236. We are more disposed to believe the story when we find it corroborated by the Dorobo. Turuthi, the Dorobo Elder, who lives near Kijabe, and Wanjugu, a son of the well-known Dorobo Elder, Marimbe, are important witnesses, and both of them have admitted that sales occurred. Turuthi stated in a memorandum sworn before the District Commissioner, Kiambu, and forwarded to us: "I agree that we sold land to the Kikuyu tribe", and Wanjugu stated: "My father had much land years ago. He sold much of it." Even the witness Kinara Kimenye, who appears to dislike the Kikuyu intensely, admitted that his father began to sell some land and received thirty goats, although the transaction was never completed. Njengwa and Kabanga Kubai are others who admitted to us that their Dorobo grandfathers had sold land. Other admissions of the kind have been found in Kiambu files, although, as will be shown later, the alleged payments are often complicated by other considerations, so that one hesitates to accept the transactions unquestionably as sales.

237. While we accord considerable weight to this evidence, we make the observation that, with the exception of Turuthi, all these witnesses are the sons or the grandsons of persons who were adopted by the Kikuyu, and are probably at least half Kikuyu in blood and more than half Kikuyu in interest. Even Turuthi appeared to us to have identified his interests with those of the Kikuyu.

238. The investigation by the late Mr. Mervyn Beech, made when he was District Officer at Dagoretti and printed in the *Journal of the African Society* in 1917, adds only a few points of fact to what we have from other sources. He mentions a Dorobo named Goitiba as being a surviving witness to a sale of land by his father, Gathagu, who may be the man mentioned in Claim No. 11 (Mbari of Mwenda). He also mentions that about half of a location of about 17,000 acres was bought from Marimbe by a Kikuyu named Gitu for "500 oxen, sheep and goats." Having regard to the manner in which the Kikuyu are accustomed to reckon and speak, we have no doubt of the meaning of this phrase. It meant oxen, sheep and goats to the equivalent value of 500 goats by Kikuyu reckoning, under which an ox is reckoned as five goats. It is therefore instructive to find that in Claim No. 30 it has been stated to us that Gitu bought land from Marimbe for 3,700 goats, 370 rams and an assortment of other things.

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239. This inconsistency is by no means exceptional and we wish to draw particular attention to the fact that, whenever it has been possible to take a statement made to the Commission concerning the number of goats paid and compare it with previous statements made by the same party before the Commission was appointed, the statements have been found, in practically every case, to be utterly discrepant. Some examples of this will be quoted in a later part of this chapter.

240. There is little evidence of fact from European sources. A letter has been produced in evidence, written by Mr. F. Watson on 30th November, 1897, to Mr. W. P. Alexander, in which it is stated :—

“Unlike Ukambani all the land here is privately owned by some one or more of the natives, and now they have learned to demand high prices for land compared with what they thought of two years ago.”

The context shows that Mr. Watson was looking for a piece of land to buy on behalf of the Church of Scotland Mission. It is probable therefore that his remark refers to prices which the natives required from Europeans, and that there is no reference here to any sales between themselves or purchases from the Dorobo. On the other hand the letter would appear to indicate that the natives had already assimilated the idea of buying land, which may be a sign that they themselves had experience of it.

241. In August, 1899, Mr. Justice Cator wrote :—

“It has sometimes been asserted that the Kikuyu acknowledge individual ownership of land, but I have heard this view contradicted and I am disposed to think that there is no individual ownership, but that the chiefs, when strong enough, assume to themselves the right to sell such land as is not actually required by the inhabitants of the villages over which they rule.”

This letter is preserved in the archives of the Secretariat (S. 211, Vol. I).

242. Mr. John Boyes mentions in his book that he had been told by a Kikuyu Headman, named Karuri, who is believed to have been of mixed Kikuyu-Dorobo blood, that the Kikuyu had “purchased tracts of land from the Athi for purposes of cultivation.” He adds : “Karuri himself based his strongest claim to the chieftaincy on the fact that he was a direct descendant of these Athi.” In his evidence given to us at Nyeri, Mr. Boyes stated that this information was given to him at the time to which the book relates, namely, 1898. It is perhaps the earliest record of the story of the Dorobo-Kikuyu land sales having been told to a European. It is

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noteworthy that Karuri lived in Fort Hall District, and that the Fort Hall natives denied in *baraza* before the 1929 Committee that they had ever bought any land from the Dorobo in that district.

243. As the claims from the Kiambu natives have reached the Commission they have been marked on a map. In most cases the descriptions given have been good enough to permit of their being marked with reasonable accuracy. A great number of conflicting claims have been revealed. If these lands really have been bought, we cannot understand why so many claims exist to the same land. When every allowance has been made for possible mistakes in recording the claims on the map, we cannot escape the conclusion that there is very little land which has not been made subject to at least two claims. The total number of persons alleged to be members or dependents of the family groups affected by the alienation of land to settlers in the Kiambu District is greater by more than 50 per cent than the total population of the Kiambu Native Reserve! These considerations seem to us to cast doubt on the contention that these lands were originally bought as private estates from the Dorobo.

244. Another point which strikes us as remarkable is that, while most of the transactions resembling sale which have been corroborated by the Dorobo appear to have taken place about the decade 1891-1900, the administrative officers of that date left no record of them. And it is still more remarkable that in the next decade, when the alienations under complaint took place, nothing seems to have been recorded or known by anybody about Dorobo selling land or the existence of *ithaka*. If *ithaka* were private estates in the sense which is now claimed, it is hardly credible that the Kikuyu should have received compensation for their *shambas* on the Limuru farms at the hands of Mr. Hope and others and said nothing to him about *githaka* rights. And yet Mr. Hope appears never to have heard of them at that date, and certainly never reported their existence.

245. It appears that in later years, when he learnt more about the manner in which the Kikuyu held this land, he regretted having recommended so much of it for alienation (*vide* Evidence of Mr. Wade, Chief Native Commissioner, pp. 2934 and 2935 of the printed evidence and quoted in section (e) of Appendix No. 1). That is perhaps evidence that he discovered landholding in Kikuyu to be more private in character than he had realized, but by no means amounts to an admission that *ithaka* were private estates in the sense which is now claimed. There is nothing to show that he gave any credence to the story that they had been bought from the Dorobo, or even that he had heard it.

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246. The question of *githaka* rights first appears as an issue on Government files when it was raised by Mr. Hobley in 1913, whereupon their existence was hotly disputed for several years. To-day they are generally believed to exist, but lingering doubts still remain as to whether they amount to a "system."

247. We have taken due notice of the views recorded by previous inquirers and the evidence on which they were based. We have given due weight to the unanimous and probably sincere opinion of the Kiambu natives, expressed in several *barazas*, that they bought their land, and we have also noted on the other side the statement made to us by Chief Nduini, at Nyeri, protesting that any Kikuyu who said he had bought land from the Dorobo was a liar.

248. All that we regard as a safe finding on the evidence reviewed up to this point is that there have been instances of Dorobo receiving payments from Kikuyu, which related in some degree to the use and management of land. Whether these payments were an innovation or instances of a general and established practice is a question which we hold over until our review of the evidence upon the further issues has been completed.

249. The next question is the date of the payments. The cases in which corroborative evidence has been given to us by Dorobo all relate to comparatively recent dates. The alleged sales by Turuthi's section in the Lari and Escarpment Forests are almost certainly since 1900, seeing that these areas are known to have been to all intents and purposes virgin forest until 1902. The evidence before us is that payments were not made in a lump sum but that the Kikuyu paid as the work of clearing proceeded, and therefore we cannot credit that the Kikuyu paid much in advance for anything which they had not yet used.

When were
the Payments
made?

250. For the same reason the sales by Marimbe of land south of the Nairobi and Neangara rivers cannot have been much before 1891, at which date the land was still virgin forest, nor much after 1899, which was found by Mr. Justice Maxwell (in a judgment already quoted) to be the date of the Masai-Dorobo agreement, whereby the Dorobo were to abandon the land south of the Neangara River.

251. None of the other sales for which we have corroboration by the Dorobo can be dated with certainty before 1890, although some of them may have been before then. The same thing applies to the cases examined by Mr. Beech.

252. An examination of Native Tribunal Records tends to confirm the view expressed in the Report of the 1929 Committee—that the original Kikuyu purchasers were the fathers and grandfathers of

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men who are still alive, and in most cases it would appear that the dates alleged for the original "sale" were not before 1880. In appeal case No. 1/31 the District Commissioner has expressed the opinion that the transaction (which he did not consider to have amounted to a sale) happened "about 80 years ago." That, in the context, does not appear to have been meant for a precise statement, and most of the other alleged sales which appear on the records appear to be of a later date.

253. The bulk of the Kikuyu claims before the Commission are to the effect that particular family groups have lost land at the hands of the Government, which they had bought from the Dorobo. Many of the claimants have submitted their statements on a printed form, which represents the transactions with the Dorobo as having happened "many centuries past." We are fully satisfied on the evidence that there is nothing whatever to justify this claim to antiquity. We believe that most of the witnesses filled in the form without any clear knowledge of what the phrase implied, and in describing their claim they often stated quite frankly that it was they themselves or their fathers or their grandfathers who conducted the transactions. Where it has not been stated in so many words, the inference is clearly suggested in the claim. Indeed, if we had nothing else to guide us but the evidence given us by the Kikuyu *mbaris*, we should have to conclude that most of the land now under claim and the bulk of the Kiambu Native Reserve were in the ownership of Dorobo landlords as late as 1880 and that the Kikuyu then began to buy the land, but that it was still very largely Dorobo in ownership when the Protectorate was declared.

254. Fortunately for the Kikuyu we are not entirely dependent on their evidence. We know that when Count Teleki went through the country in 1887 he found them firmly established in the country traversed by him after he crossed the Nairobi River until he came to the Gura. He says that Kikuyu appeared at practically every stream which he crossed, demanding *hongo* (tribute) and we do not remember that he mentions the presence of Dorobo anywhere in that piece of country. We cannot bring ourselves to believe that, if such a thing as land-ownership were ever mentioned in those days, the Kikuyu had not already secured the principal share in it.

255. We are therefore faced with the puzzle that, while the Kikuyu statements, if accepted, would suggest that most of the land was bought after 1880, Count Teleki's description of the country makes it almost certain that the Kikuyu must have been in occupation for at least a generation before that. This shows another reason for doubting the story of these "sales" as told by the Kikuyu.

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256. We shall proceed with the examination of further evidence before recording what we consider to be the truth of the matter. We can only say here that the only transactions resembling sale which are sufficiently well attested to be accepted as facts, that is to say, the transactions corroborated by the Dorobo, appear to have taken place about the period 1891 to 1899. They do not therefore provide any answer to those who hold the view that the idea of outright sale of land was foreign to the native mind until the Europeans appeared.

257. The Kikuyu evidence suggests that the payments were mostly live stock and honey, with an axe, a knife, and a branding-iron to honour the custom. It is admitted that girls were sometimes included, and, in a few exceptional cases, the blood-money for a man slain.

What, generally were the amounts of the Payments?

258. The total number of claims made is 193, inclusive of certain claims by the Dorobo. There are 141 cases in which the claim is accompanied by a statement of the payment alleged to have been made. The average payment, according to the claims, works out at 1,779 sheep and goats, 180 rams, 19 fat rams (or he-goats or ewes), 22 cattle and a number of other things, while the whole total of recorded payments is 250,849 goats, and the rest to match. We regard these figures as fantastic and ridiculous, whether one looks at them from the standpoint of the number of goats that the Kikuyu are known to have possessed, or the goat-consuming-capacity of the Dorobo, or compares them with the payments recorded in Native Tribunal cases. A few instances may be taken :—

Claim No. 13.—It is stated that the *mbari* of Thaara bought land from a Dorobo named Ithiru for 180 sheep and goats, 18 rams, 10 ewes, 10 knives, 9 axes and 10 pots of honey. In District Officer's Revision Case No. 42 of 1921, Kagone wa Ithara sued Gethungiri wa Thiru and stated :—

“Thiru, the father of the defendant, sold me a *githaka* during the great famine for 30 goats and 2 sheep.”

The President of the Dagoretti Native Tribunal explained :—

“We awarded the *githaka* to the plaintiff on his paying 11 goats. We decided in this way because Thiru paid a goat many years ago to Kagone. Kagone returned one to him. The goat paid by Thiru produced 30. Thiru took the *githaka* for the goat during the great famine.”

259. This case is very illuminating, for though we do not profess to understand its details, it would appear that all that was originally paid by Thiru (or Ithiru) was one goat, which produced thirty more, and the Kiama eventually ordered him to pay eleven

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more and keep the *githaka* or the part of it which remains in the reserve. These goats have now grown in the imagination of the claimants to 180, and 18 rams and 10 ewes.

Claim No. 20.—The claimants allege 500 goats paid. The Dorobo son of the recipient says only 80 received.

Claim No. 24.—This is the claim of the *mbari* of the late Chief Kinanjui. It has already been reviewed in a previous chapter, and it will be remembered that in the case before him Mr. Justice Maxwell commented on the barefaced lying of the parties and their witnesses.

Claim No. 86.—It is claimed that the Mbari of Kihara and Marigwa bought the land from Muthogini the brother of Marimbe and Muinami for 47,424 goats, 4,742 rams, 20 pots of honey, etc. The comment of Muiruri, son of Muinami, and Wangugu, son of Marimbe, is that their fathers, Marimbe and Muinami, sought adoption by Kihara, because one of their brothers had been killed by the Kikuyu, and they were afraid. On adoption they were given ten goats each and had to surrender a large amount of land.

Claim No. 106.—The claimants state that they bought the land from four Dorobo including Kimenye Munyugi for 10 cows, 1,300 goats, 140 rams, etc. The son of Kimenye states that only 30 goats were paid and that the sale was not effected.

Claim No. 137 (Mbari of Chiri).—Claimants state that they bought the land from two Dorobo for a payment which included 2,650 goats, 265 rams, a girl and blood-money for a man killed.

Chief Koinange stated on oath: "The original of the claim of the *mbari* of Chiri is that there was a Dorobo living in what is now the native reserve, who dug a game pit and into that game pit one of their ancestors fell. On that account and also on account of the fact that this Dorobo had taken one of their girls and married her, they received the *githaka* both inside and outside the reserve, and the piece which is outside is now the claim of the *mbari* of Chiri."

(*Note.*—The land so claimed appears to be, according to the description given in the memorandum, over three hundred square miles and includes the Yatta Plateau.)

260. It would be easy to go on multiplying instances. The evidence is on record to be examined by any one who wishes to study it in detail, and a *précis* of it has been printed (since it is too voluminous to print in full.) After studying the evidence submitted by natives in support of the *mbari* claims, we have no hesitation in characterizing the bulk of it as worthless. We go further

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and say that in our opinion many of the memoranda are deliberately untruthful.

261. We wish to invite especial attention to the fact that on one occasion, Headman Philip Karanja, who was representing native interests before us, asked leave to interrupt the proceedings for the purpose of warning witnesses not to go on telling lies about the number of goats paid.

262. In a sworn statement made recently to the Magistrate at Kiambu, the Dorobo Elder, named Turuthi, said :—

“The prices varied according to the size of the *githaka*. The lowest price was 30 goats, going up to 300 or more . . . As we did not herd, the goats paid by the buyer would be taken by us to a relative, that is, to a Kikuyu into whose family we had married—and he would herd them. As we required meat we would go and get them . . . Sometimes a girl was given, or even two, as the buying price. I have never myself heard of more than 300 goats being paid. I do remember now Karuri paid 400 goats for some land.”

On the other hand an elderly Dorobo witness stated that his father sold land for 7,000 goats before he was born; that the payments were by instalments, and that he saw the later stages of the payment. When questions of detail were put to him he became vague, but kept to the figure of 7,000.

263. Some of the Kiambu Native Tribunal cases help to shed light on the matter :—

Central Tribunal Revision Cases.

Case No. 10/30 (from the judgment).—“Seventy goats were paid as blood-money to Waraga (defendant) and the land in dispute was handed over instead of 30 goats balance.”

Case No. 17/30 (from the judgment).—“One *githaka* had been secretly sold by plaintiff's brother Muturo for 9 goats.”

Case No. 48/30.—Defendant stated that he bought the *githaka* from the Dorobo for “my daughter and 50 goats and one man who meet the death.”

District Commissioner's Appeal Cases.

Case No. 53/30.—Defendant having claimed to have bought the *githaka* for 1,006 goats, plaintiff commented : “This is the very greatest lie. These amounts can buy land from Limuru to Uplands.”

Case No. 1/30.—It is stated in the judgment that about 3,000 acres of land were alleged to have been sold, half to one party for 900 goats and 90 rams, and half to the other party

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for 80 goats and 7 rams (or as another witness stated, 700 goats). The District Commissioner comments: "All this, for what it is worth, may be some indication of prices obtaining at the time as well as of the lies that are told about them."

264. These records show that, when the question of general compensation to the tribe has not been involved in the issue, more modest estimates have prevailed. The estimate given in *baraza* at Kiambu to the 1929 Committee was "80 or 100 sheep" as the average price of a *githaka*.

265. When Mr. Hobley wrote a memorandum in February, 1912, stating the case for the payment of further compensation to the Kikuyu, he wrote that the payments which they had made to the Dorobo "often amounted to as much as 1,000 goats." He must have depended on the Kikuyu for this information and, if the *mbari* of Kihara had really paid 47,000 goats and the *mbari* of Mbogo 30,000 goats, and other *mbaris* also had paid the enormous amounts of which they now tell us, it is strange that they should not have mentioned it to him and so have improved their case. We can only conclude on the evidence before us that these representations are deliberately false. Nor in view of all the falsehoods told to us can we suppose that the exact truth was always told to Mr. Hobley. It seems probable that his estimate that the payments often amounted to 1,000 goats should be discounted considerably.

266. We do not suggest that all these claims are deliberately false. There may be some which are true. No doubt there are also cases in which the claimants, being ignorant of the true history of their land, were led away into extravagant estimates by the general spirit of exaggeration which is very evidently abroad. When Chief Koinange tells us that the *githaka* of the *mbari* of Njunu was bought for about 9,000 goats, he may be sincere in his estimate, but he would be the first to admit that he has no accurate knowledge. He represents that payments have been made by instalments through four generations and that no record or reliable tradition of the original payment exists.

Propitiatory
Aspect of the
Payments.

267. A point which suggests that the payments may have had to do with the propitiation of an influential elder as well as with land is that sometimes the Dorobo paid the Kikuyu and not vice versa. In Central Tribunal Revision Case No. 19/30 a Dorobo, named Karanja wa Gikebe, stated:—

"My father, Gikebe wa Tai, died in 1922 . . . All his properties were left with me. 801 goats and one land . . . were given to Paramount Chief Kinanjui as friendship before he died."

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268. Another point to which we wish to call attention before closing this section is the number of times when girls are included in the so-called purchase price or when land is given in compensation for a man slain. These transactions suggest that the real reason and origin of the payments may have been the making of peace and alliance between families and that in origin the question of land was of secondary importance. The constant reference to adoption also supports this view.

Payment in the form of Girls or Blood-money.

269. Twenty-three cases of girls being included in the purchase price and four cases of persons being killed and land being paid as compensation have been mentioned in claims to the Commission, and we understand that a perusal of Native Tribunal cases has revealed more instances of both kinds.

270. We feel that it would be rash for us to record any decided opinion on the amounts customarily paid to the Dorobo for land. We have not yet admitted that, in origin, they were payments for land at all. We can only say at this point that we are satisfied that payments of goats were sometimes made by Kikuyu to Dorobo either for the purpose of alliance or propitiation; that marriage price or blood-money was often included and may originally have been the essence of the transaction, and that the sum in terms of goats was far more modest than the Kikuyu have represented. The extent to which the use or management or disposal of land was a condition of the transaction is the point which we shall next examine.

Conclusion regarding the Amounts paid to the Dorobo.

271. According to the statements made in *baraza* to the 1929 Committee none of the Kikuyu land north of the Chania was bought from the Dorobo, whereas all the Kikuyu land south of the Chania was bought from the Dorobo. Also all purchase of land between Kikuyu and Kikuyu north of the Chania was redeemable, but no purchases south of the Chania were redeemable. In both areas there was a ceremony of sprinkling *tatha* or the stomach contents of a goat, but while it did not mark the transaction as final north of the Chania, it did mark it as final south of the Chania.

What was the nature, intention and effect of these Payments.

272. In our view it would be quite absurd to suppose that, the moment the Kikuyu crossed the Chania, they started a new system of land tenure. They brought their conceptions with them. We suppose that at first, to quote the opinion of Mr. Lane, "if they saw a Dorobo, they stuck a spear into him." Subsequently trade and marriage relations began to develop. As Colonel Watkins wrote in 1920 :—

"To such people (Dorobo) the Kikuyu with their flocks and herds must have appeared fortunately secured from famine, while they themselves, living mysteriously in gloomy

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forest and armed with poisoned arrows, must have seemed beings to propitiate rather than to attack."

273. But it is clear from the evidence that there must have been many cases of bloodshed. The result would probably be a fight and then a peace, attended by a blood compensation which would sometimes be found by a payment of girls or goats. No doubt the conditions of settlement would contain a reference to the land and the extent to which the Kikuyu might cut down the forests where the Dorobo hunted. It is native custom to keep exchanges as equal as possible and to keep alive the sense of mutual obligation, and it is reasonable to suppose that, as the Dorobo found himself more and more restricted in his hunting grounds through the clearing operations of the Kikuyu, he would ask for something to keep the balance true—that is something equivalent to what the Kikuyu were getting out of the land.

274. A Dorobo witness, whose father had been adopted by the Kikuyu, informed us that, while it is true that payments were made progressively as the clearing proceeded and these according to the amount of land cleared, yet there was a stipulated sum for the land and, though the payments were spread over generations, an end was eventually reached, and the payment was irrevocable.

275. It seems improbable that the subsequent payments can be regarded as the balance of a stipulated purchase-price, because native custom dislikes hard and fast arrangements of that kind. The suggestion that the first payment was for the land and the subsequent payments for the clearing is hard to accept, because we cannot conceive that the land would have been worth anything without the right to clear it. But a finding that the original payment was in respect of alliance or goodwill and that the subsequent payments were for progressive clearing would be reasonably consistent with the evidence and with what we can bring ourselves to believe. .

276. If that is true, there would be nothing essentially irrevocable about the transaction, although in practice, after the land had been cleared, the Dorobo would have found it hard to resume possession. But just as an adoption ceremony can be revoked, so one supposes that the alliance could come to an end. The following quotation from evidence in District Commissioner's Appeal Case No. 1/31 (Kiambu) provides support for the view that, as originally conceived, the transactions were not irrevocable.

Karanja Waweru (a Dorobo) : Besides the 300 goats paid to my grandfather, Waweru was paid 700 goats by Kiarie.

Examined : Why would he pay some more if the price had already been paid?

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Karanja Waweru : A debt on land can never be finished. In the old days there was no outright sale. There is to-day.

Examined : Do you claim that you have any interest in the land?

Karanja Waweru : Yes, I am entitled to receive goats when I ask for them, and my descendants after me, and if I do not receive them, I am entitled to take a piece of land and make it over to somebody else for goats and I could get goats from them whenever I wanted, and my son after me.

Examined : Do you claim that this is Kikuyu country or Dorobo?

Karanja Waweru : Kikuyu. I admit it belongs to the Kikuyu to whom it was sold, but I claim that I am always entitled to receive goats on it to balance the profits which the purchaser is getting out of the land.

Senior Chief Koinange : I remember that Chief Kinanjui made a brotherhood-adoption ceremony with Waweru and made him a sort of chief of the Dorobo. Then Waweru told his people that the old sales of land which his people had made to the Kikuyu were not valid, and that there should be a second purchase. I do not know how many goats Kiarie paid, but he paid some. I do not know how many thousands of goats Waweru got for the Dorobo altogether, but this second purchase was final.

277. If these statements are true the position of the Kikuyu before this final payment was analogous to that of "Aguri" under their own custom as it existed and still exists in Nyeri and Fort Hall Districts, by which land is loaned in exchange for goats and can be redeemed by repayment.

278. Gradually the situation changed as the Kikuyu first gained an equal, and then a superior, position. The transitional stage may have been a kind of partnership, and in some of the claims before us we find the Dorobo and the Kikuyu claiming to own or to have sold land in common. For instance, in Kiambu District Commissioner's Appeal No. 40/30 a witness, Wachaga s/o Hinga, stated :—

"I am a Kikuyu and Bera was a Dorobo. He was an adopted brother of mine . . . Bera and I sold land to Kanguruto and other land we sold to Njao."

279. In claims Nos. 33 and 99 it is stated that the *githaka* was bought from a Kikuyu and a Dorobo. In claims Nos. 155 and 180 the *mbari* of the alleged Dorobo vendor has submitted a joint claim with the *mbari* of the alleged buyer, and other similar instances could be quoted.

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280. In most cases, however, it is certain that the Dorobo soon fell into an inferior position and either left the country or sought adoption by the Kikuyu. In some cases it seems from the evidence that they were forced into the adoption ceremony by the fear that their lives would not be safe otherwise. Even after adoption they claim that they kept some land back for their own use.

281. The time at which the Kikuyu ceased making payments to the Dorobo in respect of the land is uncertain, but in the southern part of the district the practice evidently continued until after Kinanjui was chief and we regard it as probable that the idea of a finality of purchase as a definite transaction was an innovation introduced by him and copied from Europeans. Nevertheless, it is probable that in the northern part of the district the Dorobo had already become absorbed, or driven out, and payments, if they were ever made, had ceased.

The effect of
these
transactions.

282. According to the Kikuyu Land Tenure Report, the effect of these transactions has been that "Kikuyu families are the undisputed successors in the occupation of areas over which Dorobo families once hunted." We regard that as an over-statement in so far as the word "undisputed" is concerned. Several claims have in fact reached us from Dorobo claiming large stretches of the Kikuyu Native Reserves. In some cases the claim is made in the words: "Being Dorobo we inherited the land from our ancestors." These claims are not confined to the Kiambu District, but embrace also a large part of the Fort Hall Native Reserve.

283. Possibly the Kikuyu theory that their land rights in the Kiambu District rest on purchase from the Dorobo would not work out very favourably for them, if it were used as the only support of their rights. The Dorobo can reasonably contend: (a) that the sales, generally speaking, are not proved, and that probably much of the land was not sold; (b) that the obligation of protection conferred on these Kikuyu adopters was not carried out, and that, as soon as the Kikuyu had got his land, the Dorobo was sometimes "de-adopted" as the Kikuyu themselves confessed to the 1929 Committee; (c) that the alleged "sales", when they took place at all, were not final, but only redeemable loans, as the action of Chief Kinanjui proves, and that the alleged final payment was not generally agreed by the Dorobo and did not reach many of them; (d) that in many cases they are still partners in the land; and (e) that, when and in so far as they sold land, they frequently reserved a piece for themselves, as the Kikuyu Land Tenure Report admits.

284. We shall not take the responsibility of pronouncing on these assertions, but we think that, if the Kikuyu were fully to realize their implication, they would be less ready to insist that

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every land question should be decided on historical grounds and would be more willing to concede something to the claims of beneficial occupation.

285. By a process which consisted, as we have seen, partly of alliance and partnership and partly of adoption and absorption, partly of payment, and largely of force and chicanery, the Kikuyu had already succeeded the Dorobo when Count Teleki passed through Kikuyuland in 1887. While it is clear from the haphazard way in which the clans are distributed that the original settlement was by families acting independently, yet they were forced into some sort of cohesion along the ridges by the necessities of the case. At any rate Count Teleki found each ridge to be virtually an independent sovereignty, and as he crossed the stream which divided it from the next he was met by a crowd of natives under a *Muthamaki*, or Headman, demanding tribute. There seems to be no doubt—and, if there had been any doubt, it would have been resolved by the map of the claims made to the Commission—but that these *Athamaki* regarded themselves as the lords of the ridges down to the point where the streams each side of them met. This point frequently lay well beyond the utmost limit to which the Kikuyu ever have penetrated, and one of the claims embraces all the land between the Thika and Athi Rivers right down to the Mwitwa Siano and includes the Yatta Plateau. Quite obviously they were claims of sovereignty rather than of land holding, and we had it in evidence that as late as 1896 “each hilltop was fighting with the next.” The evidence of Mr. John Boyes leaves no doubt that the various sections under rival *Athamaki* were ready to fight each other on the slightest provocation. The situation clearly was that there was a series of petty and virtually independent Kikuyu groups divided from each other by streams. Generally speaking what had passed from the Dorobo to the Kikuyu was not a number of agrarian estates, but a succession of seigniories along the ridges.

To what extent had the *Githaka* System developed when the farms were alienated.

286. We find it very doubtful whether the idea of a private estate as distinct from the totality of the ridge had been fully conceived at that time. Prior rights to particular portions of the ridge by the family which had colonized them were probably recognized in some degree, but must have been extremely nebulous, as is shown by the large number of rival claims which have been lodged. Probably by the time that Government embarked on its programme of land settlement in 1902, something more nearly resembling the *githaka* system as now understood had begun to appear in the more thickly populated areas, but was still so new a conception and so uncertain of its place in native custom that, when the Limuru farms were alienated and some of these *ithaka* were lost, their existence was never even mentioned to the officer who was charged with the duty of paying compensation. An indication that the

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unit of land tenure at that time was still to be found in the ridge rather than the *githaka* is provided by the fact that many of the claims made to us have been joint claims by several *mbari* to the land between the rivers without any reference to the boundaries of their individual *ithaka*.

287. The circumstances in which the alienation of land for European settlement took place have been well-described in Mr. Mortimer's memorandum, which has been printed with the evidence. It suffices to say here that most of the alienations affecting the Kikuyu took place between 1902 and 1907, although there were a few which were of a later date. There is evidence in the files to show that there appeared to the responsible officers of that time to be plenty of land remaining for all reasonable requirements of the Kikuyu. In view of the very large amount of land still remaining to the Kikuyu at the time the opinion is understandable. It is easy to be wise after the event, and to say that the conditions which we describe in the economic sections of this Report ought to have been foreseen, namely, that there would be a large natural increase in the population and a tendency to gravitate towards Nairobi and the railway so that problems of local congestion would inevitably appear.

288. We have to consider whether these difficulties call for any special recommendations on our part for the compensation of individuals or special sections of the tribe, or whether a solution on tribal lines will suffice.

289. While certain areas have been added to the reserve, as has already been described, the particular right-holders who were dispossessed did not receive any individual allocation of land, and were compensated only in respect of their cultivated gardens. The compensation was at the rate of two rupees an acre.

290. In cases where they did not take this compensation they had the right to remain on the land under the protection of section 31 of the Crown Lands Ordinance, 1902, and subsequently under section 86 of the Crown Lands Ordinance, 1915. We find it to be a fact that the existence of this legal protection was not generally known to the natives, and that many of those who left the land might have elected to remain if they had known of these protecting clauses.

CHAPTER VIII.

AN EXAMINATION OF PRIVATE RIGHTS AND CLAIMS—(PART 2).

THE NUMBER OF PERSONS CLAIMING RIGHTS ON LAND WHICH HAS BEEN ALIENATED.

291. We have now completed our survey of the historical basis of the Kikuyu private claims, and in the next chapter we shall have to make proposals for the just settlement of the private claims which exist on land which has been alienated. Before doing so it is well that we should make clear, as far as we can, what number of persons are affected..

The density at
which the
Land
alienated was
Inhabited.

292. It will be sufficiently accurate for our purpose if we consider every "household" (i.e., the average members of a married man's family, not the inhabitants of a single hut) to consist of five persons and the proportion of wives per married man to be 1.5, and the cultivation per wife to be one acre with half-an-acre per household thrown in for fallow and for the labour of unmarried girls and other dependants. We shall therefore reckon two acres of cultivation per household.

293. The allowance for fallow seems small, but we are considering only land which had been so recently cultivated that it might have been counted as part of the family gardens when compensation was paid.

294. We shall consider the Kiambu District first and take the alienated blocks one at a time in the order given in the schedule in section 223 (a) above, to which reference should here be made. Any actual evidence on which we can base an opinion of the density of population in the several blocks is very meagre, and in many places we have to make a guess on the general probabilities of the case. Among the factors which have weight in determining our estimate we draw attention to the conclusion, which we have already reached and recorded in Chapter II, that the general average density obtaining in the Kiambu Native Reserve in 1902 was 150 to the square mile, and we also remark that these alienated blocks, with the exception of the eastern end of the Limuru farms, were situated on the borders of the Kikuyu territory near the forest fringe, and are therefore likely to have been inhabited at a density considerably below the average for the reserve.

295. In the Kikuyu Station Block 7.48 square miles of Kikuyu territory have been alienated, as shown in items 1 and 2 of the schedule. Mr. McClure's map, mentioned in section 136 above, shows the area as inhabited in considerable density. Some of the

The Kikuyu
Station Block.

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villages which he shows may have been recently moved here from elsewhere, and had possibly not been built in 1902. But the block in the immediate neighbourhood of Kikuyu Station was not alienated until 1904, by which date the density must have been much as represented in the map. This would appear to suggest a density of between 80 and 90 to the square mile, but the area alienated to the Church of Scotland Mission is known to have been more thickly populated, and probably brings up the average density per square mile over all to about 100. That would give 748 persons, whom we regard as forming 150 families of five, having an area of land in cultivation equal to about 300 acres.

296. Dagoretti Register "B" shows that Rs. 404 were expended in this area on compensation at Rs. 2 an acre, which was probably paid for rather fewer than 202 acres, since we believe that many small fragments were allowed to count as acres. The uncompensated residue would therefore be more than the apparent balance of 98 acres, and may have been more like 200 acres. Most of the uncompensated residue would have been found on the land of the Church of Scotland Mission, concerning which Dr. Ruffelle Scott wrote: "Most of the native *shambas* are left intact, and therefore, of course, uncompensated." The "reconstructed plan of the mission in 1902, produced in evidence, shows 19 native villages containing 130 huts, which would be equal to about 87 "households", which might be expected to have about 174 acres in effective cultivation.

297. On the other estates it would appear probable that compensation was paid and that most of the natives left, and, although the figures do not work out in every respect, we find it probable that our estimate, when put into round numbers, is approximately right, namely, that this block was inhabited at a density of about 100 to the square mile; that the population consisted of about 150 families, of whom about half were compensated and the other half, principally occupying the land of the Church of Scotland Mission, remained where they were, uncompensated.

The Block from
Kabete to
Kiambu and
including Fort
Smith.

298. In the block from Kabete to Kiambu (and including Fort Smith) 23 square miles of Kikuyu territory have been alienated. The evidence indicates that the land round Fort Smith and the immediate neighbourhood of Kabete was at least as thickly populated as the general average of the reserve. But eastwards of Kabete until the effective border was reached the population dwindled, as was natural on the fringe of the territory. Of the northern extension towards Kiambu we have found that the land alienated as farms 80, 81, 82 and 25 was covered with forest in which there may have been a few clearings, but to the west of

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them the population became thicker as the present reserve boundary was approached. The available evidence does not warrant a confident estimate but, the general average density in the reserve being 150, we consider it unlikely in the face of the evidence given by Mr. Lane, Colonel Ainsworth, Dr. Boedeker, Mr. McClellan Wilson, Mr. Knapp, Mr. Douglas Cooper and others, that the average density in this block exceeded 110 to the square mile even after allowance has been made for considerable density around Fort Smith. This would give a total of 2,530 persons whom one may regard as consisting of 506 families of five, who might be presumed to have 1,012 acres in cultivation.

299. We must now consider how this agrees with the amounts recorded to have been paid in compensation in this area. The Register shows Rs. 1,625 and one ox, and there is a further record of a payment of Rs. 20, so that, if the value of the ox is assessed at Rs. 40, the total becomes Rs. 1,685. This would nominally represent compensation for 842 acres, but was probably paid out for a lesser amount than that for the reason which has already been described. Nor must the point be neglected that part of this compensation, for instance, the Rs. 75 paid in the Thinbigwa area, was paid to stray Kikuyu who had made clearings for themselves outside the effective limits of Kikuyu territory and were not living in this block of twenty-three square miles.

300. After weighing these factors we remain of opinion that the average density in this block was about 110 to the square mile, and that the population consisted of about 506 families of five. The figures obtained from the Register suggest that about three-quarters of these were compensated and left, while the other quarter was not compensated and remained.

301. The Kamiti River block is an area of 7.72 square miles, rather more than half of which we have found to have been forest or bush with possibly a few clearings in it. The remainder may have been inhabited up to the average density obtaining in the reserve. We consider 100 to the square mile to be a reasonable approximation. This would give 772 persons whom we may regard as 154 families of five. The land actually cultivated by them would presumably be about 308 acres. The Kamiti River Block.

302. The Register shows Rs. 555 paid out in compensation, which would represent nominally 277 cultivated acres compensated. But it is probable, for the reason already given, that the Rs. 555 were paid out in respect of a rather less area of cultivation than the nominal figure. The uncompensated residue might, therefore, be nearer to 60 acres than 31, which is the ostensible balance. This would indicate that round about three-quarters of the natives took

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compensation and moved, while about one-quarter had no compensation and remained. This is in general conformity with the evidence, especially the native evidence, which insists throughout that most of the natives were "told to quit." The point of difference is that the natives generally say that no compensation was paid.

303. After weighing the points we consider that this block was inhabited at a density of about 100 to the square mile; that there were about 154 families living in it, and that about three-quarters of them received compensation and moved, while the rest remained on the land.

The Farms
between the
Ngewa and
Chania Rivers.

304. This is an area of 17.10 square miles. We have found practically the whole of it to have been uninhabited in 1902, and to have been so little used even for the grazing of cattle that we have hesitated whether it ought to be shown as Kikuyu territory at all. We consider that very little, if any, of it was used for the grazing of cattle in 1902, but that there probably was some degree of effective use before the famine. There is no evidence that at the time of the alienations in 1905 there were any dwellings at all in the northern part, but in the southern part a certain amount of compensation was paid and we may set down 50 households as representing the total population of the entire block at that time.

305. The total compensation shown in the Register to have been paid in this area is Rs. 168, representing compensation for 84 acres, which would be the rough equivalent of the gardens of 42 households.

The Block
North of the
Chania.

306. According to the evidence this block appears to have been practically uninhabited. No record has been found of any compensation paid, and it is doubtful whether at any time there were any natives living in it. In so far as it was used at all, it was for grazing.

The Limuru
Farms (main
Block).

307. The part of the Limuru farm area which is hatched red on a yellow background on the coloured map following section 227 and appears as item 7 in section 223 (a) is 45.90 square miles, and we may refer to it as the main block in contra-distinction to the area at its western extremity which is cross-hatched. We shall deal in the sections below with the main block.

308. While all the other alienations were to some extent on the edge of the country, the eastern end of the Limuru farms forms a definite projection into the Kikuyu country. There is nothing in its position in connexion with the rest of the reserve, therefore, to indicate that it was inhabited below the average density. But, apart from evidence given to us, we should probably assume a somewhat sparse population because the altitude rendered the land

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unfavourable for the crops which the Kikuyu principally cultivated at that time. Count Teleki, who crossed this area before the famine, describes a stage in his journey when he apparently went from what is now Mr. Knight's farm to what is now Njunu Estate, and states that the population was less thick than it had been during previous stages of his journey in Kikuyuland, but that villages of as many as 20 huts were still encountered.

309. In the famine the population seems to have disappeared to a large extent and to have been slow in returning. Secondary bush grew up, and several of the European witnesses have described the area as practically devoid of population. Dr. Boedeker, however, considered that it was as thickly populated as the rest of the reserve.

310. Mr. Morson describes a journey from Nairobi to Limuru in 1904 in which he took a route near where the present "A" route lies. This would have taken him the whole length of what is now the Limuru farms, and also through about five miles of what is still native reserve, but he states that he saw no natives. We take this to be evidence on the one hand that native occupation was sparse and evidence on the other hand of how very easy it is to miss seeing the natives as one passes through a country, until a considerable degree of density has been reached. Mr. Impey states that in 1904 there were, in his opinion, no more than ten natives to the square mile in the part of the Limuru farms which lies within eight miles of Limuru, that is to say nearly the whole of them.

311. On the other hand it is generally considered that, when the farms in this block were alienated, about half the natives continued on the land and about half were moved. Of those who moved all who applied were paid compensation to the extent of Rs. 2 per acre. The Register shows a total payment of Rs. 1,036 in the Limuru farm area, representing compensation for 518 cultivated acres. Those who remained probably had an equal amount of land in cultivation, so that there would have been 1,036 cultivated acres. This would mean that one acre in every 28 was cultivated.

312. Since it has been credibly stated that at that time one married woman usually cultivated one acre and that married women were about 31 per cent of the population, the total population would be 3,342, or 73 to the square mile. This conclusion is based on several unproved assumptions, but seems to us to be conformable with the probabilities. It takes no account of natives who may have left without compensation when the farms were alienated, but it is not likely that they were many. If we increase our estimate to 80 to the square mile we probably cover them, and

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we do not think that any higher estimate would be in keeping with the evidence regarding the undeveloped condition of the country at that time.

313. At 80 to the square mile the population would be 3,672 persons, whom we may regard as forming 734 families of five.

The Limuru
Farms
(Western
Extremity).

314. Reference to the map will show certain areas at the western end of the Limuru farms, close to the Railway and extending southward to Muguga. This land amounts to 4.50 square miles in all, of which we have decided that three-quarters were bush or forest-covered. In Mr. McClure's map five villages are shown on Mr. Kay Mouat's land (L.O. No. 176 and 177) but, all told, it is unlikely that the total population in this area exceeded thirty households of five, so that we may put the density as between 30 and 35 persons to the square mile. There is no record of compensation paid, and it may perhaps be assumed that the population, such as it was, remained on the land.

L.O. 4961.

315. L.O. 4961, 669 acres, is an island of Crown land in the native reserve and is situated near the north-western extremity of the estate of Saba-Saba, Limited. It was alienated in freehold in 1904, but has since reverted to the Crown. At the time of the alienation it appears to have been unoccupied.

The Block near
Nyeri.

316. Before the alienations, satisfactory arrangements had already been made with the local chiefs for the disposal of the natives in the locations which are now in the charge of Chief Nduini and Headman Nderi, in the Nyeri District and at the time of the alienation there were no residents.

Mission
"Islands" in
the Reserve.

317. The total area alienated in freehold to mission outstations forming isolated islands in the reserve is about 0.16 of a square mile. In most cases vacant lands were assigned, and there were few, if any, huts on any of this land. No account has been taken of mission land in the reserve which has been alienated on lease because such land has not been excluded from the reserve and the rents are paid to the Local Native Council.

The Total
Population
which was
Resident in
the Alienated
Blocks in the
Kiambu Area.

318. The total area alienated from the land which we have found to have been properly Kikuyu territory in the Kiambu District is 149½ square miles in all, exclusive of the area of approximately 16½ square miles which we have found to have been already abandoned by the Kikuyu before it was alienated (*vide* section 223 (a) above). The total number of families of five which we have found to be resident on them is 1,594. This gives a density of 73 persons to the square mile as opposed to about 150 in the reserve. Having regard to the fact that the land alienated was : (a) generally speaking on the fringe of the territory; (b) partly under forest or scrub in the Kiambu and Kamiti areas, and used

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only for grazing in the northern areas, and above the altitude most suitable for native crops in the Limuru area, we consider this difference to be in accordance with the facts.

319. Speaking generally, we find it probable that, when Government alienated this land, the proportion of cultivated land in it, inclusive of fallow, was of the order of one acre in every twenty-five to thirty acres. This consorts both with the foregoing calculations and also with the impressions which we have formed after hearing the evidence, both native and non-native.

320. The total compensation shown above as having been paid is Rs. 3,848. It does not agree exactly with the table at page 364 of the evidence which shows Rs. 3,872 and sundry sheep and cattle. The discrepancy is not very significant and we are justified in concluding that about 962 households were compensated (at Rs. 2 an acre and two acres per household). Since we have found the total number of households to have been about 1,594, there must have been about 632 households or families of five who received no compensation and continued to live on the land.

321. After 1908 no further entries appear in the Dagoretti Register, which is our main source of information concerning compensation paid. But it is certain that between that date and the present time many families drifted away, most of them uncompensated. On the other hand the residue that remained has increased in numbers by natural increase and the position to-day appears to be that there are possibly three or four hundred households living as of right on farms in the alienated blocks.

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CHAPTER IX.

AN EXAMINATION OF PRIVATE RIGHTS AND CLAIMS—(PART 3).

THE QUESTION OF COMPENSATION FOR LOSS OF PRIVATE RIGHTS AND FOR DISTURBANCE.

The Question
of Compensation.

322. That concludes our summary of the facts, and we have now to consider whether the compensation paid by Government to individuals was adequate or, if it was not adequate, what practical steps can be taken. In approaching the matter we wish first to dispose of the question whether any claim of any sort can now be entertained in respect of land which is not included in what we have found to be either "unequivocal Kikuyu territory in 1895" or "admissibly acquired by the Kikuyu by 1902." To avoid prolixity we shall for the remainder of this chapter allude to the area under these two heads simply as "Kikuyu territory."

323. We shall consider this question both under its aspect of *githaka* rights and also in respect of individual clearings.

Githaka
Rights outside
"Kikuyu
Territory."

324. We are satisfied that no *ithaka* in the sense of estates can be said to have existed outside "Kikuyu territory", as we have defined it. Any pretence that the land was bought from Dorobo will not stand examination, since we are satisfied that such payments as were made to Dorobo were by instalments paid according to the extent of the progressive clearing of the land. If the land was not cleared, it is an indication that it had not been bought. Nor were the Dorobo so effectively or exclusively established on the land as to have been able to claim a right to sell it. There was no effective occupation by the Kikuyu and if any Kikuyu headmen or "elders" or *aramati* have claimed that they exercised any authority there, we are satisfied that such pretensions are false.

Individual
Clearings
outside
"Kikuyu
Territory."

325. There were a few venturesome Kikuyu who, relying on the *Pax Britannica*, began about the year 1900 and onwards to make clearings in the forest beyond their fellows in areas into which they would not previously have ventured. We cannot allow that such persons established any right to land but we consider that they were entitled to compensation for disturbance only. We are satisfied that, as far as can now be ascertained, such compensation was always paid whenever application was made for it to the responsible officer. We have no reason to suppose that natives were not fully aware how to apply for compensation, but it would be impossible to say at this date what percentage of them failed to do so.

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326. We consider that the rate of compensation was adequate in the case of those natives who were living outside Kikuyu territory. They were able to return to their own right-holding in Kikuyu territory and to extend it if necessary. In the district principally affected by the alienations, namely, Kiambu District, there was at that time no such congestion as would have prevented their doing so, and the actual cost of moving their huts after reaping their crops would, in conditions obtaining at that time, have been sufficiently met by the compensation provided, since under the tribal custom then in force a man was always able to obtain the assistance of his neighbours in building his hut, and the material cost nothing.

327. While no substantial harm was done to any individual native, we recognize that the setting of hard and fast boundaries to the reserve precluded natives from extending their frontiers by the time-honoured method of clearing and burning forest, and we accept it as an obligation under the first term of reference to consider the needs of future expansion, though not necessarily on tribal lines.

328. We now turn to the consideration of compensation for loss of land which was inside Kikuyu territory. We have already made the comprehensive recommendation that, if possible, land should be added to the reserve equivalent to the balance of loss. What we have here to consider is whether any special recommendations have to be made to recompense particular individuals or sections. We shall consider them in three groups: (i) right-holders; (ii) *githaka* holders; (iii) tenants.

Loss of Land
inside
"Kikuyu
Territory."

329. The substance of the complaint is that in respect of disturbance the compensation given to right-holders was inadequate, and that in respect of land no compensation was given at all. We shall consider the question of land first.

Loss sustained
by Right-
holders.

330. It is not altogether true that no compensation was paid for the loss of land. Ndeiya grazing area was added to the reserve and there are also some other areas which we have found to be legitimate off-sets against the loss. But the actual right-holders who suffered loss were not given the land.

331. In considering what was due to the right-holders notice must be taken of the fact that the rights which they exercised on the lands of which they were deprived by no means amounted to full ownership.

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332. The following is the account given in the Kikuyu Land Tenure Report of the limitations of the rights of a right-holder, or as he is there called, a sub-owner :—

“We find that he is restricted in two ways from full ownership :—

- (a) First by the privileges which other members of the clan or *mbari* enjoy on the land, and which are secured by the customary sanctions of tribalism, which tend to prevent an individual share from being precisely defined. In addition to the individual share to which his right is virtually exclusive, he has a part interest in the reserve area of uncultivated land which remains undistributed in the hands of the *Muramati*, and in this area his right is limited by the fact that other members of the *mbari* also have rights, and even non-resident members may claim to be accommodated if there is room for them. This restriction is definitely less in Kiambu than elsewhere and is disappearing.
- (b) Secondly, he is limited to the extent to which the right of use which he enjoys differs from exclusive use. Gradually the conception of the uses to which land can be put is enlarged, and with the relaxation of clan-control it is found that the right of exclusive use can be extended to cover most of them . . . (in Kiambu) though grazing still remains a common right the “owner” is allowed to exercise a right of discrimination which is half-way to an exclusive right.”

333. It is clear therefore that, when the land was taken away, it was not only the right-holder who suffered, but that all the members of the *mbari* shared in the loss, since up to that time the spare land on the *githaka* had been available for them and their descendants to cultivate and to live in so long as there was room. It is also clear that the right-holder, when he lost this land, had a selection of other holdings open to him, on which he could “claim to be accommodated”, and that the right-holders of whichever *githaka* he finally selected for his home must have suffered a corresponding diminution of the balance of land at their disposal. A third and most important consideration is that the right to depasture cattle on uncultivated land was common to all the tribe, and since at least nine-tenths of the land was uncultivated it is clear that the rights of the tribe were very extensive.

334. It appears, therefore, that in considering the question of allotting the land to be added in compensation, we must take into account not only the dispossessed right-holders but all the members of the *mbari* and, in some degree, the whole of the tribe. This is a point which must have been present in the minds of the

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claimants when they submitted their memoranda, since in stating the total number of members of their *mbari* represented in the claim they have given far more than could ever have been resident on the land, and must be presumed to have included those non-resident members who had an interest in it.

335. When we add up the total strength of all the *mbari* claiming to be concerned we arrive at a total which is greater by 50 per cent than the total residents of the Kianibu Native Reserve. Even after every allowance has been made for the tremendous exaggerations of which the Kikuyu are capable, we take this to be an indication that most of the members of the tribe consider themselves to have an interest in the land which has been lost, and not only the resident right-holders.

336. It might perhaps be thought that a solution could be found by dividing the compensatory land between the dispossessed right-holders according to the size of their former holdings, and then insisting that they should accord to the kindred of their *mbari* the same rights as they would have had in the original land. Practical considerations put this out of the question. Even if it had been done at the time of the original alienations, it would probably have been an unpopular arrangement, and, while the block addition to the reserve would have been welcomed, the dispossessed right-holders would in many cases have preferred to make their own arrangements rather than be ordered to live in it. It is noteworthy that, although Ndeiya, an area of 74 square miles, was added to the reserve in 1913 and was commonly regarded as compensation or part compensation for their losses, the Kikuyu have kept it as a grazing area and have generally opposed any suggestion that any private or prior rights should be created. They have always regarded it as an asset of the whole tribe, and the right-holders from the alienated lands have never claimed any prior consideration.

337. We are convinced that the responsible elders of the Kikuyu have always regarded the loss of the Limuru farms and other territory as a matter of tribal rather than individual concern. In respect of compensation for the land lost we agree with this view to the extent that we find it to offer the best and most practicable solution, and we have recommended compensation to the tribe to the full extent of the land lost. We have considered whether in justice to the right-holders we ought to recommend that prior rights should be accorded to them in the land to be added. But if we are over-solicitous for the various sectional interests and try to reproduce on the new land all the rights that existed on the old, so that the tribe, the group, the right-holder and the tenants should all of them be precisely compensated, we are convinced that

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such solicitude would defeat its own end by embittering relations between groups, and that, in any case, so precise a settlement is certainly not practicable at this date. The best interests of the people will be served if the compensatory area is given as a simple addition to the reserve and placed under the general protection of Government and the Land Board without any special conditions or obligations.

338. We do not for a moment mean that it should be kept as a commonage or that no private rights should be created. Our point is that with the addition of this block of land to the reserve and the payment of such further compensation as we shall presently recommend the troubles of the past should be considered to have been decently buried.

339. In the chapter on "Exchanges, Adjustments and Special Cases" we review a number of special cases. One of them constitutes an exception to what has just been written, because it appears to us that a definite pledge was given which must be honoured. It is the case which arose from the alienation of the land now occupied by the Government Farm and the Government Farm Extension. In this case we feel bound to make a recommendation that an area in the compensatory block or alternative land elsewhere should be reserved to the use of the dispossessed *mbari* under terms and conditions which we shall specify. There are also a few other cases in which we shall have to affirm that prior rights exist or should be allowed.

Compensation
for Disturb-
ance of Right-
holders.

340. We now pass to the question of compensation for disturbance. We are still speaking of right-holders, and it will be convenient to consider them in three categories: those who took compensation and left the farms before 1908, the date of the last entry in the Register; those who remained on the land until after 1908, but left eventually; and those original right-holders or their direct descendants who are still on the land.

Right-holders
who took
Compensation
and left.

341. We have found through a computation made in the previous chapter that the total number of householders who took compensation and left the land before 1908 were about 962. We have no means of knowing what proportion of them were right-holders, but judging by general probabilities, we estimate them as between 750 and 800 householders. We have credited each household (both of right-holders and tenants) with two acres of cultivation for which compensation was paid at Rs. 2 an acre, and this agrees with the Rs. 3,848 which we know by the records to have been paid.

342. The position, therefore, was that each householder who left received Rs. 4, and he was also allowed to reap his crop. The

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assumption made by Government was that other land was available to which he could go, and that the Rs. 4 would be enough to reimburse him for the actual expense of moving—that is to say, the moving of his goods, the building of new huts, and the clearing of the land for the new garden.

343. We consider that in cases where the right-holder actually had other land to which he could go, the Rs. 4 probably were adequate to meet these charges, when regard is had to conditions prevailing at the time.

344. In those days there was no need to pay for poles or thatching grass and the building of a hut was an enterprise for which a man was entitled to claim the assistance of his kindred. Any little expense to which he was put by way of entertainment was probably met adequately from the four rupees.

345. We need not consider here the loss of land, because we have already covered that point and advised full compensation, value for value, to the tribe as the best and only practicable means of dealing with the matter. But we must consider one point in connexion with it, and that is the probability that in many cases it was not so easy as Government supposed for the right-holder to move from one place where he had been living as of right, to another place where he could live as of right, and that incidental loss and inconvenience may have been caused to him beyond the mere cost of re-erecting his huts and clearing his land. While we are not prepared to admit without examination that this loss and inconvenience were as severe as has sometimes been stated, we can well believe that it was by no means negligible and the position must be examined.

346. It has often been stated that, when the farms were alienated, many of the right-holders had no other land to which they could go as of right and were, in fact, forced to go out and squat on European farms. We do not deny that there may be some force in the contention, but we think that it is much exaggerated.

347. In the first place we remark that, before the British came, tribes were exposed to frequent shocks from the invasion of other tribes, and must often have been forced to rectify their frontiers. We cannot conceive that the tribe had no way of re-distributing its population when such adjustments had to be made.

348. Secondly, it seems to us clear from the passage which we have quoted from the Land Tenure Report that the dispossessed right-holders had a right to be accommodated by their kindred. Dr. Leakey thinks that because they had bought the land from the Dorobo with borrowed goats, there would be no obligation to admit

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them without a return of the goats. This seems to us to be very unlikely; surely there must have been some of their kindred from whom they had not borrowed goats.

349. Thirdly, it has been clearly shown from files which contain the reports of surveyors and administrative officers that there was still a great deal of undeveloped land in the Kikuyu country. Although there were large parts which could be described as "a garden", there were other large stretches of bush and forest.

350. Some at least of the dispossessed right-holders must have had relations living in these areas, and would have found no difficulty in getting accommodation.

351. Fourthly, we do not think that, twenty-five years ago, a tenant suffered much disability in comparison with a right-holder. We are informed that natives of the Nyeri District have left their right-holdings in large numbers and come to settle in Kiambu District as tenants. There is no custom of rent, and cases of tenants being ordered to quit are said to have been extremely rare. We think it unlikely, therefore, that the prospect of being a *muhoi* in the reserve could have been so distasteful to a dispossessed right-holder as to have forced him to go and squat in the settled area.

352. Lastly, we observe that the practice of leaving the reserve to go and squat did not become very widespread until the war, which was more than a decade after most of the farms were alienated. And when the movement did occur, the emigrants were mostly from Fort Hall. There is no evidence before the Commission to show that dispossessed right-holders played any more prominent part in this emigration than any other section of the community. It may very well have been so, but it has not been proved.

353. On a comprehensive survey of the position we see little reason to suppose that the present squatters on European lands left the reserve because of difficulties connected with the tenure of land. The desire to find better pasture for cattle is generally considered to have been the motive power behind the movement and, grazing in the reserve being common, that is a consideration which affected all classes alike. Generally speaking any squatters in the settled area must be held to have gone there of their own free will with a view to better themselves and not as a result of any economic pressure, except such as is connected with shortage of pasture.

354. In so far as this general opinion may have to be qualified in respect of particular cases in which right-holders, failing to find any suitable place in the reserve, were compelled to emigrate by pressure of circumstances, there is reason to suppose that the

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result has generally been to their advantage. The average squatter undoubtedly is richer in stock than the average native in the reserve, and consequently has been able to marry more wives and have more children. It is true that, if he returns to the reserve, he will probably be put to some expense in establishing himself there but, when that expense has been defrayed, it is likely that he will still be better off, on balance, than his relations who have remained in the reserve.

355. But, when all has been said, we believe that, if more had been known of the Kikuyu land system than was known at the time, Government would have made some provision for the establishment of the dispossessed right-holders on land in their reserve where they could live as of right, or would at least have calculated the cost of disturbance on a more generous basis, so as to provide for all attendant inconvenience and loss of amenities as well as the bare cost of moving and preparing their new land. We count it fortunate that very little real hardship has resulted. The Government of the day acted on the information available to it, and we certainly find no occasion for recommending at this date that any redress is due to any individual. Nevertheless, it may be well to throw into the balance of the general settlement a certain additional acreage to be counted, as it were, as a comprehensive compensation for loss of amenities and general disturbance caused at the time of the alienations. While it is undeniable that the Kikuyu have gained far more than they have lost by the establishment of white settlement with a large town and a ready market on their borders, we still find it reasonable to recommend that such a course be adopted so that every aspect of past grievances may be held to have been covered and finally settled.

356. While this course is recommended and will be appreciated, it does not solve the real problem, which is economic, and is concerned with the difficulty of the population distributing itself on the land. The return of squatters to the reserve will create problems very similar in their nature to the land alienations of a generation ago but more severe because of the increased rigidity of the *githaka* system. The most practical remedy which we can recommend for the benefit of the Kikuyu is to suggest modifications which will provide greater security for tenants and better prospects of their becoming right-holders. In addition to this we shall have proposals to make in the economic sections of our report to meet the requirements of future expansion.

357. In Chapter VIII it was computed that about 632 householders remained on the land when the farms were alienated. Possibly about five hundred of them were right-holders. It need hardly be said that the whole calculation is extremely problematical, but no means has revealed itself of obtaining a better figure.

Right-holders
who were still
on the Farms
in 1908, but
left after-
wards.

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Many of these families eventually left, but we cannot say how many. It is not important to establish the exact figure, and we may assume, with sufficient accuracy, that three or four hundred families have left the farms in this way.

358. So far as can be ascertained no compensation was paid to these families. On the other hand the disturbance was less severe, since for the most part they moved at their own time and occasion to suit themselves. There have, however, been some exceptional cases in the last few years. We know of no definite cases during these years in which right-holders have been evicted in open contravention of their rights under section 86 of the Crown Lands Ordinance. But there have probably been cases in which right-holders, after having signed a squatter's contract, have been evicted on the expiry of the contract under the impression that the signing of the contract had put an end to any rights which they may formerly have had. But only one case has been revealed of such a nature as to require any special recommendation on our part, and we shall deal with it in the next chapter in which we discuss Exchanges, Adjustments and Special Cases. (*Vide* sections 408 to 413 below.)

359. Our general recommendation is that in calculating the area to be added in general compensation for disturbance and loss of amenities as recommended above, the certainty be borne in mind that some of these families were moved or were induced to sign squatter's contracts in circumstances which should, in equity, have entitled them to receive compensation for loss of rights. We are satisfied that it would be useless at this stage to try to trace individual cases, and all that can be done is to take them generally into account in settling with the tribe at large. We except from this recommendation only such cases as may have occurred since the Commission was appointed, and we shall deal with them in another section below.

Right-holders
who are still
on the Land.

360. We now turn to the case of right-holders who are still on the land. In the case of all land alienated on lease, areas which were in the actual occupation of natives at the time of the alienation are deemed to be excluded. In the case of all lands leased under the provisions of the Crown Lands Ordinance, 1915, the relevant section is section 86, to which our attention is especially directed in the terms of reference. In the case of all leases under the Crown Lands Ordinance, 1902, the corresponding section is section 31. Both sections are quoted in Appendix No. 2 for ready reference, and we interpret our instructions in the sense that we are expected to deal with both of them.

361. There are also cases of natives who were in occupation of certain lands which have since been alienated as freehold and are

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still resident upon them. These cases must be held to have occurred by accident, since, it is provided under section 30 of the Crown Lands Ordinance, 1902, that no land which is subject to native rights may be alienated as freehold. In so far as such cases exist and in so far as the natives are still in occupation, we consider that their position and rights are no less entitled in equity to be regarded than the rights of natives on leasehold land which are protected under the clauses cited. We propose to deal with them all together.

362. Having considered the matter very fully in the light of all the evidence and having regard to the opinion expressed by the Attorney General, which is filed with the original evidence, we are clearly of opinion that the position caused by the existence of these clauses is most unsatisfactory. The meaning of the phrase "actual occupation" has been variously interpreted, and the present Attorney General gives them a wider connotation than his predecessors had assigned. The prevailing uncertainty is embarrassing to all concerned. If actual occupation includes *githaka* tenure, we become involved at once in all sorts of issues of fact. The lessee can feel no confidence as to what land is his and what is deemed to be excluded from the lease as the property of some Kikuyu right-holder, who in his turn would not be safe against a counter-claim by the Dorobo on the score of pre-existing rights, and that again might be contested on the ground that the Dorobo were vassals of the Masai.

363. Another set of doubts arises in connexion with succession. Do the rights of the "actual occupier" cease with his death or do they pass to his heirs? Is the lessee bound to accommodate on the land all the progeny of the occupier and do they all succeed to his rights?

364. We do not consider that the fairest solution of the matter could be reached by the arbitrament of a Court judgment on the precise significance of the phrases employed by draughtsmen in drawing up the ordinance, or the nature and effect of the so-called Dorobo land sales or the intricacies of *githaka* tenure. We accept it as our duty to propose an equitable settlement, trusting that the necessary amendments in existing legislation will be made, even if it should become necessary for the general security to ask for a special Order in Council.

365. As a Land Commission we are bound to have great respect for the principle of security, without which no agrarian legislation can possibly prosper, and we deem it extremely detrimental to security and to progress that a state of things should exist in which lease-holders have developed their lands in reliance

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on a document of lease which they hold from Government, only to find that it contains a clause of such doubtful significance that their position is jeopardized.

366. While we do not think that in equity any extreme interpretation ought to be put upon the clause, the possibility that it might be so has an extremely disquieting effect, which is deleterious to the good relations generally obtaining between the lessees and the resident natives. Native political agitators are quick to take advantage of the situation and the resultant indiscipline is embarrassing to the tribal authorities in the reserve as well as to the Europeans. We consider it essential to the peace and well-being of the tribe that the areas over which its land-rights or the rights of its members extend should be consolidated and that the addition to the reserve of the grant of land which we shall recommend should be accompanied by the extinction of all native private rights outside the reserve except (a) such rights, if any, as may be held upon title, and (b) such rights as may have been acquired in another reserve, e.g., as a *muhoi* under the system of land tenure obtaining.

367. Generous compensation for disturbance must accompany this extinguishing of rights. We consider that it should take the form of a payment in cash, and we believe £2,000 to be a fair assessment of the total sum that should be paid.

368. We do not state the compensation at any particular sum per household, because the evidence and memoranda submitted to us in the *mbari* claims provide a warning of the extravagant pretensions which would be put forward. But we think that, if each local native council has a definite sum given to it from which compensation should be paid, but which should not be exceeded, it is probable that a just distribution can be effected. We consider that Government should decide the proportion due to each Native Council on the basis of the data which are contained in this report and that the Councils should then draw up a list of the persons to be compensated and the amounts payable to each, but should not actually make the payment until the sanction of the Provincial Commissioner has been received. In making this recommendation we have had regard to the number of families now living on the farms as of right, as far as we are able to estimate it from the information before us.

369. While our general recommendation is that cash compensation should be paid to Kikuyu who are now living on the farms as of right, but not to those who have left, we consider that a point should be stretched in favour of those who have left the farms since the Commission was appointed.

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370. We have already explained that in our opinion the Administrative authorities, after consulting the native authorities, should be free to develop the land added to the reserve in whatever way may seem best in the interest of the tribe, and we are unwilling to embarrass them with any special recommendation that these persons should receive special consideration in regard to that land. But we do not doubt but that the Administration would do all in its power to ensure that they should find proper accommodation in the reserve, either in the added blocks or elsewhere.

371. In order to ensure that the settlement should be final we recommend that, as soon as the compensation has been paid and standing crops have been reaped and reasonable notice to quit has been given, all private rights of Kikuyu natives outside the Kikuyu Reserve, except those to which we have alluded above, should be expunged. We doubt whether this can be satisfactorily accomplished without an Order in Council, and we therefore recommend that an Order in Council be sought.

372. In Part III of this report we shall consider this problem in its general application to the country at large, and examine the extent to which the same treatment can be applied elsewhere. But it must be understood that there are special cases, both in Kikuyu and elsewhere, which must be reviewed separately on their merits and those which concern Kikuyu are reviewed in the chapter which follows. The question of increasing the rent against the lessee in consideration of the enhancement in the value of the land which will result from the removal of these disabilities may be left to Government. Clause 31 (5) of the Crown Lands Ordinance, 1902, is relevant as to the procedure to be adopted.

373. We consider that in most cases tenants were adequately compensated when they left the land, and in any case no grievance remains which the passage of time has not already adjusted. But in respect of compensation due to tenants who may originally have been occupying the land when it was alienated, and who are still there—if there are any such cases—we consider that no distinction should be made between the treatment meted out to them and to right-holders.

Compensation
for Disturb-
ance of
Tenants.

374. A small point arises in respect of persons who were *aramati* or administrators of *ithaka* on land which has been alienated. Over and above the loss sustained by right-holders they have suffered a certain loss of prestige and profit in the shape of seasonal gifts which they used to receive. But no case is revealed such as to warrant a special treatment. Government is administering the native reserve largely through the native authorities, and there is plenty of scope for natives of ability to win a position for themselves.

Compensation
due to *Gitaka*
Holders.

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**Accommodation
for Dorobo.**

375. The case of the Dorobo deserves consideration and we are satisfied that, generally speaking, they did not intend to relinquish all their rights in Kikuyu country. Most of them have now been absorbed, but there are still a few who live in the reserve independently or in the forest near Kijabe. We consider that they have established a right in equity to be received into the Kikuyu Reserve. We do not think it practicable to recommend that the Forest Department should be required to permit them to continue indefinitely to live in the forest and we consider that a small additional extension of the reserve is advisable in order that accommodation may be found for them in the reserve without hardship to the resident population. We recommend that they should not be bound to occupy this block, but that the administration should charge itself with the duty of finding places for them, and we expect that little difficulty will be experienced.

**Summary of
Recommendations.**

376. In sum, our recommendations in respect of compensation for disturbance and loss of private rights outside the reserve are as follows:—

377. In addition to the area which we shall recommend to be added to the reserve in compensation to the tribe for land lost, we recommend a further addition of 2,000 acres which should be regarded as comprehensive compensation for disturbance and loss of amenities occasioned by the alienations, and a further 1,000 acres as a provision of land so that the tribe may accommodate certain Dorobo now living in forests near the tribal borders. We also recommend a monetary compensation of £2,000 to be paid through the Native Councils to natives who are still living on alienated land as of right.

378. On the other hand we recommend that upon payment of compensation and after standing crops have been reaped, all private rights of Kikuyu outside the reserve should cease except such as are held upon title or such as may have been acquired in another reserve under the system of land tenure obtaining under the native custom of the tribe concerned.

379. We regard the just and permanent settlement of these matters as of paramount importance to the future peace and prosperity of the tribe.

CHAPTER X.

EXCHANGES, ADJUSTMENTS AND SPECIAL CASES.

380. There are some exchanges and adjustments which have been suggested in order to satisfy a claim of right, and there are others which rest on a basis of convenience or economic advantage. While a logical arrangement might require that we should deal in this place only with the former class and reserve the latter to be reviewed in the economic sections of the report, it is not easy in practice to keep the issues separate, and we therefore propose to include them all in the scope of this chapter. We shall first take the proposal known as the Tigon Exchange.

Exchanges and
Adjustments.

381. When the Limuru farms were alienated, the area now known as Tigon (L.O. No. 160) comprising 945 acres, remained as an island of unalienated Crown land in the middle of the farm area.

(1) The Tigon
Exchange.

382. It is evident from the records that its reservation from alienation had nothing to do with any question of native rights, but was due to an oversight.

383. In 1916, Mr. G. A. S. Northcote, then District Commissioner, Kiambu, proposed that Tigon be made a township and since then it has been generally known as Tigon Township Reserve.

384. In 1925 Mr. W. F. G. Campbell, District Commissioner, Kiambu, proposed to move the natives, who were by this time residing at Tigon in very considerable numbers without specific authorization.

385. The Provincial Commissioner, Mr. C. M. Dobbs, raised the question of native rights, and in December of the same year Major H. W. Gray, who had succeeded Mr. Campbell as District Commissioner, proposed that the matter should be settled by compensating the *githaka* owners.

386. In 1926 the Chief Native Commissioner claimed the area for the native reserve, but the Commissioner of Lands opposed the application on the ground that it was not geographically connected with it.

387. In June, 1930, the Secretary of State referred to Tigon in a despatch to the Governor, and expressed the opinion that it should be held for "native requirements, compensation or other."

388. We are satisfied from the evidence that about the year 1904 the land was almost uninhabited. There appears to have been a small village or possibly only one hut near where the

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Police Station is now and a few other huts dotted about in the neighbourhood, but few or none of them were within the boundaries of the area in question.

389. In later years, as they gradually realized that this little island had been left apparently forgotten in the middle of the farm area, natives began to filter into it from homes which they had occupied on the farms before they were alienated, and also from the reserve. By 1923, according to the Hut Tax Census, they had reached the number of 312 persons, and by 1932 this figure had been almost doubled and there were 607 persons on the land, a density of 411 to the square mile.

390. The native evidence represents that there were ten *ithaka* on the land, all bought from a Dorobo named Kimunyi. A son of this Kimunyi appeared before Mr. Lydekker, District Officer, in 1921, and admitted the sale. While we are not impressed by the statements as to the tale of goats paid over, it appears probable, in view of all the evidence, that the Kikuyu had been engaged for a good number of years before the famine in the process of replacing the Dorobo on the land, and in this case it would appear that the process had not been completed when the famine occurred.

391. It appears from evidence given to Mr. Lydekker that a son of the Dorobo "vendor" and one other Dorobo still had *ithaka* of their own on Tigoni in 1921.

392. The most probable conclusion is that the Kikuyu had already acquired some rights in the land before the famine, but the amount of bush which admittedly covered the land in 1904 shows that the occupation can never have been very effective. When the famine occurred they left the area and did not return to it in any considerable numbers until after the surrounding farms had been alienated. This is our finding on the facts.

393. The expediency of allowing these natives to remain on this island in the middle of the Limuru farm area has been challenged not only by the European settlers of the neighbourhood but also by successive District Commissioners at Kiambu, who have represented that in the interests of the natives themselves it would be far better for the reserve to be consolidated. In June, 1930, the District Commissioner wrote as follows on the subject of the Administrative difficulties which are occasioned by outlying fragmented portions of the native reserve:—

"I do not think it is necessary to labour the point that such islands are most prejudicial to the efficient administration of the district. It is a district in which tribal control has become weakened by the individualism of some of the younger generation and the District Commissioner has the

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complicated task of deciding when it is necessary that the traditional authority should be maintained and when upon occasion it must be let down gently.

"It is necessary to have an efficient system of divisions and locations under reliable chiefs who must be in close touch both with the District Commissioner and with their own people.

"A second point in the firm administration of the district is that Government orders must be strictly enforced. But this becomes difficult when the orders operate harshly. Whenever these "islanders" move out of their island without a registration certificate they are liable to arrest."

394. With these views we agree. His general proposal was that the Tigoni land should be surrendered in exchange for a block of forest land so situated as to join the Lari Native Reserve with the main reserve, and so eliminate two "islands" by a single exchange. The Conservator of Forests has agreed to this proposal with certain minor modifications.

395. The basis of exchange proposed was:—

- (a) $1\frac{1}{2}$ acres for every acre.
- (b) Compensation for ordinary round hut in the form of exemption from one year's tax on the hut.
- (c) Compensation for a better-class hut or house to be a cash compensation *ad valorem*.
- (d) Compensation for planted trees (i.e., gums and wattles) at a cash valuation.
- (e) Each *githaka* holder on the land surrendered to be allowed to choose whether he will take his substituted *githaka* in the northern extension block, which is of high altitude, or in the other blocks, which are lower, but not to be allowed to choose the precise locality which should be at the discretion of the District Commissioner and the local Land Board.
- (f) Compensation for wire fencing, if any, at a cash valuation.
- (g) Sufficient time to be allowed for the move to be conducted without hardship or inconvenience.

396. We are satisfied from the records that every care was taken in putting these proposals before the natives. No less than three *barazas* were held, the first two to explore the position and the last to ascertain the opinion of the natives upon the proposals. We are satisfied that the natives fully understood their nature and details, and the representatives of six out of the ten *ithaka* agreed. The agreement of one of the six, however, was contingent upon a piece of land being found for him in the forest reserve near

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Headman Mukoma's, and not in the block suggested—a concession which the District Commissioner undertook to recommend in his case.

397. We consider it to be a fact that the *githaka* holders have now for the most part withdrawn their agreement, but we ascribe this principally to the extravagant hopes which the appointment of the Commission has raised.

398. After considering the evidence and the representations made from all quarters, we believe it to be to the advantage of these natives and the reserve as a whole that they should be ordered to quit Tigoni and be accommodated and compensated in the manner suggested above.

**Kithirioni
Exchange.**

399. Kithirioni is an island of native reserve of seventy acres surrounded by the Lari Forest Reserve. We are satisfied that it is in the best interests of the inhabitants that they should be moved from their isolated position and be consolidated with the rest of the reserve, conditions in regard to compensation being the same as for Tigoni. This could be done by moving them about three-quarters of a mile north of their present home into an area adjacent to the Lari Native Reserve.

400. The position of these natives differs from that of Tigoni in that their land is native reserve, and they cannot be moved unless the Lands Trust Ordinance is amended. But in a later part of this report we shall make proposals for an amendment whereby advantageous exchanges would be possible, subject to the consent of the Local Native Council and the Lands Trust Board.

**Extent of
Land required
in Compensation
for Tigoni
and Kithirioni.**

401. The total compensatory area required for Tigoni and Kithirioni at an allowance of an acre and a half for an acre would be 1,522 acres. This has to be added to the area of the general compensatory addition.

402. We, therefore, recommend that 1,522 acres be added to the reserve in the Bathi River area, so as to form a corridor between the Lari Reserve and the main reserve in the position shown on the sketch map opposite page 24 of the printed evidence. This would have the effect of consolidating the reserve. The natives moved from Tigoni and Kithirioni should be offered first choice of occupying the land, but if they prefer to take their compensation in one of the other compensatory blocks which we shall recommend to be added to the reserve, we do not think that they should be precluded from doing so, and we note that some of them have expressed a preference for Muguga.

**(2) L.O. 6905,
the White
Sisters.**

403. The White Sisters obtained a lease in 1912 of certain land containing an area over which the natives claim rights. Part of the western boundary adjoining the reserve was never beaconed

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by the surveyor and in these circumstances Mr. Isaac caused a trench to be dug in an endeavour to establish the boundary, but in error put it a little further to the east, parallel to the correct line, and thus cut off 80 acres from the area covered by the lease. All parties thenceforward regarded these 80 acres as part of the native reserve.

404. Mr. Isaac's line was never called in question until the surveyor demarcated the reserve boundaries in 1928 and established the line as shown on the deed-plan.

405. The natives resented the surveyor's demarcation which they interpreted as an attempt to take 80 acres of their land, and countered by claiming not only that land but 300 acres to the east of it, namely, L.O. 295/6 and 295/8, land which in 1931 the White Sisters sold to a Mr. Gamoos. Both claims rely on prescriptive right, and also section 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance, 1915.

406. We need not concern ourselves with the 300 acres or with the still more ambitious claims which have been made on this area since the Commission assembled. We have already determined the extent to which the Kikuyu were in occupation (section 190).

407. But the 80 acres constitute a special case. The consequences of Mr. Isaac's mistake have been that this area is thickly covered with dwellings, and some at least of the natives resident there appear to have been in continuous and unchallenged occupation from about 1913 until 1928 when the mistake in the boundary was discovered. They must be held to have established a prescriptive right. It would not be fair to move them without very generous compensation. We recommend that, in order that unnecessary disturbance may be avoided, the 80 acres be bought from the White Sisters, either by agreement or, if necessary, under the Land Acquisition Act, and added to the native reserve as a part of the lands to be added in general compensation to the tribe.

408. The land now occupied at Kabete by the Government Farm (L.O. 189) and the Government Farm Extension (L.O. 189a), comprising together 1,518 acres, was excised from the native reserve, and an undertaking was given that the local natives should be compensated. The Secretariat files reveal that three areas which were to have been alienated as farms, were included in the native reserve, and were considered as compensation. They were L.O. 2000 (which was situated between L.O. 291/1 and L.O. 249/2), L.O. 400 (which was situated to the west of L.O. 247/1) and L.O. 489 (which was situated between L.O. 86 and L.O. 22). They comprised 1,889 acres against the 1,518 acres of the Government Farm and the Government Farm Extension.

(3) The Government Farm and the Government Farm Extension.

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409. The contention of the natives is that this was not a fair exchange for two reasons: Firstly, that the areas given in exchange were originally Kikuyu territory, and that it is not sufficient compensation for the loss of two pieces of Kikuyu territory that Government should refrain from alienating three other pieces; secondly, that the original *mbaris* who had lived on the three other pieces naturally took possession and resented any intrusion by the *mbaris* dispossessed of the land alienated for the Government Farm.

410. Since all the three areas added in exchange are included within the boundaries of the area which we have found to have been "unequivocal Kikuyu territory", we cannot but agree with the Kikuyu that the arrangements made for compensation were not satisfactory, and that the undertaking to compensate has still to be honoured.

411. It is understood that the families concerned are the Mbari ya Nyungu and other *mbaris* mentioned in claim No. 85.

412. On the alienation of the land many of these natives went to squat on Karen Coffee Estate, where they remained until October, 1931, when they were evicted. Government, having been apprised in advance of the intention to evict, made arrangements for their temporary accommodation in three blocks in the Dagor-etti Forest area.

413. We shall include these blocks in the land which we shall recommend to be added to the reserve in general compensation to the tribe. We do not consider it necessary or advisable that any statutory or defined private rights should be created for these *mbari* in independence of the Administration, but we recommend that the block be added to the reserve as a whole. We commend the case of these particular *mbari* to the Administration and remark that an obligation lies to ensure that they are suitably accommodated, and, in so far as may be practicable or generally desirable, we recommend that an area be set aside for their use not less in extent and value than the area originally lost.

(4) L.O. 388/1,
"the Kiheriko
Land."

414. There were right holders on the land alienated to the Africa Inland Mission at Kijabe, and most of them were of the *mbari* known as Kiheriko. It was assumed that the whole of them were of that *mbari*, and an arrangement was made between the Mission and the Kiheriko whereby the Mission surrendered 400 acres of land to them in consideration of being quit of all further claims. The agreement, dated 10th February, 1930, was signed by sixteen senior representatives of the *mbari*.

415. The Principal of the Mission has agreed and has carried out the undertakings. The survey has been completed; the plans

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have been altered; and the rent payable by the Mission has been reduced in proportion. •

416. There has proved to be a catch in this arrangement, in that it has been discovered that some of the natives claiming right-holdings on the place were not of the Kiheriko clan, and the Kiheriko are refusing to let them have a share in the 400 acres.

417. The form of agreement which was dated 10th February, 1930, was signed on the one hand by the Assistant District Commissioner, Kiambu and the District Surveyor, and on the other hand by various natives representing the Kiheriko *mbari*. It is to the effect that the elders and representatives of the Kiheriko clan "in consideration of the voluntary surrender by the Africa Inland Mission of 400 acres of leasehold at Kijabe for the beneficial occupation of our clan . . . the boundaries of which land have this day been clearly pointed out to us . . . hereby renounce absolutely on behalf of ourselves, our families and heirs, all claims whatever to the Mission at Kijabe, under 86 (i) . . . or any other . . ."

418. The Field Director signified the assent of his governing body in a letter to the District Commissioner, Kiambu, dated 3rd July, 1929. In that letter he agreed to surrender 400 acres to Government "for the use of the Kiheriko clan" subject to certain conditions, of which the most important was "that the relinquishment of this area shall satisfy in full all claims of previous occupants of the land now comprising the Mission Estate."

419. We are satisfied that both the Field Director of the Mission and the District Commissioner were under the misapprehension that there were no other right holders to be compensated except the "Kiheriko clan" and that in drawing up the document the District Commissioner intended the "Kiheriko clan" to cover all the native right holders on the estate, and we have his assurance that it never occurred to him that the document could have any other significance than a complete extinguishing of all native rights on the estate in consideration of the surrender of 400 acres to Government to be used for the beneficial occupation of the natives affected. We are satisfied that the Mission would not have agreed on any other terms.

420. In all the circumstances we consider it right to recommend that this area be added to the reserve without any special reservation of private rights. We consider that, in administering the land, due regard should be given to the claims of the Kiheriko, in so far as may be practicable, but that they should not be deemed to over-ride the claims of other natives who were resident as of right, and who appear to us in equity to have equal grounds

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for consideration. We are satisfied that the 400 acres were a full and just equivalent for the rights surrendered by all the resident natives and that there was no intention on the part of the District Commissioner to create any distinction between them.

(5) L.O. 185/2
and L.O. 186.
The Church of
Scotland
Mission.

421. The Church of Scotland Mission land consists of a piece of leasehold and an adjoining piece of freehold, both obtained in 1905. The leasehold was 2,173 acres leased "for the purpose of agriculture, and breeding and raising cattle" for a term of 99 years under the Crown Lands Ordinance, 1902. The freehold was 1,000 acres. Of the leasehold 150 acres have been sub-let to the Alliance of Missionary Societies, of which 100 acres were for the Alliance High School and 50 acres were for the Women's Industrial Home.

422. A large number of natives reside on the mission land, who claim to be there as of right. According to the evidence there would appear to be about 1,450 natives now resident, who claim to be either members of the *mbari* of Hinga or of the *mbari* of Njunu or else tenants of these *mbari*. A counter claim to part of the land has been submitted by the descendants of a Dorobo, named Bera. We have no intention of pronouncing on the rival merits of these claims, but it is important to remember that they exist.

423. Mr. Calderwood and Mr. Barlow gave evidence as representing the executive of the Mission, and expressed the willingness of the Mission to surrender 2,000 acres of land to the Native Reserve on certain conditions. The first condition was that the area surrendered be permanently secured to the Kikuyu people for their use and occupation. There would naturally be no objection to accepting that condition.

424. The second condition was that prior consideration should be given to those natives now residing on the Mission land who have, or may be presumed to have, a legal claim under the 1902 Lands Ordinance, together with those who have left the estate in times past, but who were in occupation when the Mission acquired the land and who may now wish to return. The descendants of such original occupiers were also included. It was asked in addition that the present Mission squatters, many of whom have lived on the Mission land for a long period, but who are not original occupiers, should not be deterred from settling on the surrendered portion should they so desire.

425. The third condition, which was a request rather than a condition, was that *githaka* rights may be restored, if possible, to those who originally had them. And if it is not possible to restore

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them over the whole of the land, then it was asked that they be restored over part of the land, and that the *mbaris* of Hinga, Muturi (Njuni), Wahothe and Wagithuku in particular should have *ithaka*.

426. The final condition was that the residue of the land remaining to the Mission should all become freehold.

427. While we regarded this offer as generous and had much sympathy with the intention underlying these proposals, we could not agree that it is a fair stipulation that the private rights of natives should be made the subject of a bargain between Government and the Mission, so that the rights safeguarded by the bargain must necessarily prevail against claims, perhaps equally well-grounded, which may be advanced by other natives. There are, as it happens, disputed family claims on this estate, as is shown in Nos. 1, 2 and 3 of the "*Mbari*" claims (Evidence, pp. 265/268). But even if there were no such points of contention, such a guarantee would clearly be unwise, since it would result in the creation of an anomalous form of tenure in this particular part of the district, which would impede the process of adapting the *githaka* system in conformity with modern requirements.

428. We therefore arranged a further interview with the Mission authorities and represented to them that it would be preferable that the area should be added to the reserve without special conditions. We gave our assurance that our Report would contain recommendations for safeguarding the private rights of natives, and would also propose the introduction of rules for giving more security to tenants in Kikuyu (*vide* section 517 below and Part III *passim*). Relying on this assurance, Dr. Arthur, the Moderator of the Mission, agreed to surrender the 2,000 acres for addition to the reserve without any special conditions as to tenure.

429. We recommend that in consideration of the surrender of the two thousand acres the residue of 1,000 acres remaining to the Mission should all be freehold, any incidental cost of conversion or survey being borne by Government.

430. In section 474 below we shall make a recommendation which would have the effect of connecting the Ndeiya grazing area to the area surrendered, by means of a corridor consisting of about a hundred acres of land excised from the Dagoretti Forest Reserve.

431. L.O. 123 is a piece of land, 2,049 acres in extent, lying (6) L.O. 123. about two miles to the east of Ruiru Township, and more than eight miles from the nearest point of the Kikuyu Native Reserve. It was reserved for the natives in 1904 when the surrounding lands were alienated, but is not included in the Native Reserve as now gazetted. The reason for its reservation in 1904 was to find

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accommodation for natives disturbed by the alienation of certain lands of which they had formerly made use in some degree for depasturing their cattle.

432. For some years before 1931 natives had ceased to occupy this land, and in January of that year Government authorized its alienation to the Ruai Sisal Company, but with the proviso that the question of compensation must remain open for consideration.

433. Since we are now proposing to compensate the Kikuyu in another manner (namely, by block additions in other quarters equivalent to the balance of loss suffered by the tribe), the claim to this area should be allowed to lapse.

(7) L.O. 4961,
"Paul
Clarke's
Farm."

434. L.O. 4961, generally known as Paul Clarke's Farm, is an area of 669 acres which was granted in freehold in 1904, but was not occupied except for a short period in 1906 when Government used it for depasturing cattle captured in the Embu Expedition. It changed hands twice, and came into the ownership of Mr. Paul Clarke, who first began to develop it in 1925, twenty-one years after its first alienation.

435. The natives promptly protested. The farm is completely surrounded by Native Reserve, and they have been using it just as any other part of the reserve. They stated that the reason why they had not protested when the farm was originally alienated was that they had known nothing of it.

436. These representations were considered by Government with the result that Mr. Clarke was compensated by a grant of land elsewhere, and L.O. 4961 reverted to the Crown. The native claim of right was met by a proportion of the farm amounting to 276 acres being set aside for their use, but it was not gazetted as Native Reserve. An acre and a half of the remainder has since been leased to the Maragua Electric Power Company. The remainder of the land (approximately 391½ acres) ranks as unoccupied Crown land.

437. Because the land falls within the area which we have found to have been Kikuyu territory and because it is entirely surrounded by gazetted Native Reserve, we recommend that the whole of it be gazetted as Native Reserve, and that the rents of the leased area be paid to the Local Native Council.

(8) L.O.
325/R, Saba-
Saba, Ltd.

438. L.O. 325/R, Saba-Saba, Limited, lies outside the area which we have found to have been Kikuyu territory, and the evidence shows that as late as 1908 there were only a very few Kikuyu huts on it (compare the evidence of Mr. F. H. Jordan and Mr. Seth Smith at section 195).

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439. The District Commissioner has given evidence to the effect that approximately 1,000 acres of the farm are now occupied by 45 natives and their families, a number of whom claim to be right-holders and others who claim rights on other parts of the farm.

440. Since we have found that the land lies outside the boundaries of what was effective Kikuyu territory, we are not greatly impressed with the claims to right holdings.

441. A suggestion made by the District Commissioner is that the 1,000 acres which are now under native occupation (in the position shown on the plan attached to his evidence) be acquired from Saba-Saba, Limited, and added to the reserve. He considers that this could be done by offering them 1,000 acres elsewhere.

442. In view of all the circumstances we recommend that this be done or that the land be purchased, and we consider that the area added to the reserve must be understood to form part of the general compensation to the tribe, and that the block addition may be reduced accordingly.

443. There is also a small matter of 22 acres of the farm which lie to the north of the Public Works Department main road (Thika to Fort Hall). They are included in the farm, according to the title deeds, but in the reserve according to the gazettelement of 1926. But the deposited plan which accompanied the gazettelement agreed with the title deeds and not with the gazettelement. The District Commissioner states that the natives have been in beneficial occupation since 1908 and must, in his opinion, be held to have acquired a prescriptive right. We consider that the 22 acres ought to be bought from the farm and added to the reserve.

444. L.O. 1322, Dagoretti Township Reserve, has been excluded from the Native Reserve. It is the site of the Dagoretti Government sub-station, which is now closed, and besides the site occupied by the Government buildings there are also a few Indian shops. The total area of the reservation is fifty acres, but ten acres round the Government buildings and the shops would suffice for the present requirements of the centre. We recommend that the whole fifty acres be returned to the reserve, but that ten acres be regarded as set apart for a trading and social service centre, the rents from the shops being paid to the Local Native Council, but the area occupied by the Government Station, which exists wholly for the benefit of the natives, being rent free. We are informed that the revenues at present derived from the shops are £57-12-0 per annum.

(9) L.O. 1322,
Dagoretti
Township
Reserve, 50
Acres.

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445. We consider that the whole area may legitimately be included as part of the 21,000 acres of compensatory land which we have recommended to be added to the reserve.

(10) Njengu
Salt-lick.

446. Njengu salt-lick is part of the South Nyeri Native Reserve and is joined to the main reserve by a road of access. It appears that squatter stock from the North Nyeri settled area also use this salt-lick and, since they belong to Kikuyu, it is quite certain that the natives do not grudge them this facility. But the necessity for proper control to prevent infection makes it necessary to recommend that a part of the salt-lick be kept for the use of squatter cattle. We consider that the exact arrangements can be effected by negotiation and there is no occasion for any detailed recommendation on our part, but we agree with the general objects of the proposal. There is no need for excision and the method can be either by setting aside or by lease.

There has also been a proposal for changing the line of approach to the salt-lick, and the recommendations of the witnesses stand on the record of the evidence (p. 512). We commend the general lines of the proposal of the Mount Kenya Association to the consideration of Government and suggest that, when a suitable alternative route has been found it should be two hundred feet wide. The required adjustment should then be made by exchange under the enabling clauses which we shall recommend to be included in the Lands Trust Ordinance.

(11) Salt-lick,
Nyeri Town-
ship.

447. The salt-lick in Nyeri Township is claimed by the natives but in view of the evidence we have received we do not consider that a case has been made out for excising it from the township and adding it to the Native Reserve. There are strong medical objections to the use of the salt-lick by the natives, and we think that such a matter should be one which the township authorities should decide themselves.

(12) The
Ndeiya
Exchange.

448. There is a piece of land at the south-west corner of Ndeiya which the Kikuyu loan to the Masai in exchange for a piece of land to the south-east of Ndeiya, near the Dagoretti Forest. This is nominally an annual arrangement and it is to the mutual convenience of both parties; it has been suggested that a permanent exchange, somewhat on the lines of the present agreement, might be effected. We shall return to the consideration of this matter in sections 701 and 709 below, when we are dealing with the Masai Province.

(13) Various
Minor
Adjustments.

449. There are various minor adjustments which could easily have been made by exchange, if the Lands Trust Ordinance had provided a machinery for exchanges. We consider that we shall discharge our duty in respect of these cases if we recommend suitable provision to be made in the ordinance, and it is not necessary

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for us to examine them individually. Instances of this kind appear to be provided by the cases of Gethumbwini, Limited, regarding a question of an acre, L.O. 226 (Miss Collyer) regarding part of an acre, L.O. 227 (Mrs. Grist) regarding 0.7 of an acre and L.O. 187 (Dr. Ecedeker) regarding the straightening of a boundary. There are also cases where approved additions to the reserve have not yet been made because of difficulties in the ordinance, for which we shall have to propose a remedy.

450. We now turn to the consideration of special cases which provide exceptions to our general recommendations that compensation should be paid in land up to the full value of the land lost. The reason for regarding the following cases as exceptional is that the land surrendered has, in whole or in part, been applied to services for the direct benefit of the natives.

Special Cases
affecting the
Question of
Compensation.

451. The total acreage alienated to missions or educational institutions within the area which we have found to have been "Kikuyu territory" may be assessed at 7,939 acres as shown in Appendix 3. These institutions are of direct benefit to the Kikuyu, and on that ground a claim might be based that the whole of these acres should be placed, so to speak, on the free list, that is to say, that we should not recommend any compensation to be paid because of them. We do not, however, take that view entirely. We distinguish two classes of such land, namely, land necessary for the mission or other educational institution to discharge its functions satisfactorily, and land which has been granted as a species of endowment. Since agricultural instruction is an important part of the training, the acreage falling in the first of these categories is fairly large, and provision for the houses and gardens of resident native adherents of the mission may occupy a considerable area in some cases. Moreover, a plantation of wattle for firewood is generally required. Taking these points into consideration we have agreed to regard 2,300 acres as the total sum of land actually required to enable all these institutions to fulfil their functions. It has been necessary to be arbitrary and to make an assessment on probabilities. Captain Wilson considered 2,500 to be the best assessment while Mr. Hemsted thought 2,100, and we have agreed to compromise on the figure stated.

(1) Mission
and Educa-
tional
Institutions

452. All the remainder of the land we consider to fall under the head of endowment land, intended to be farmed at a profit in order to provide funds for the mission, and in some cases parts of it have been sold or sub-leased. We do not consider it right that land of this character should be exempted from the scope of our general recommendations that equal compensation must be found for the Kikuyu in return for the land lost.

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453. But in regard to the 2,300 acres we consider that justification exists for putting them on the "free list." Even here it might be objected that, however much the tribe as a whole may have been advantaged, there were right holders who were dispossessed, and therefore full compensation must be paid. When land tenure has become truly individual, this objection would have to be sustained, but as things were when the land was alienated, and as they still are, all uncultivated land, though subject to "rights", is at the disposal of the whole tribe for purposes of grazing, and most of the land alienated to missions was of that kind. This point has been considered in all its bearings in a previous chapter, and we are satisfied that no injustice will be caused to anyone by the course proposed.

454. We, therefore, recommend that the total compensatory acreage shown as payable to the Kikuyu be reduced by 2,300 acres in consideration of the benefits which the Kikuyu are deriving from the institutions concerned.

(2) Nyeri Township.

455. Nyeri Township Reserve comprises approximately 1,400 acres. It contains the Administrative Headquarters of the Provincial Commissioner and of the District Commissioner in charge of the Nyeri Native Reserve as well as the District Commissioner in charge of the settled area. There is a hospital for natives, and numerous shops and stores.

456. Having regard to the conditions obtaining at the time when the land was alienated, we do not consider that any particular group was unduly treated. Chief Nduini and Headman Nderi, the respective heads of the sections most concerned, have undoubtedly been advanced in position and prosperity since the Government Station was established, and adequate provision was made for the land requirements of their people, who also have prospered from their proximity to the town.

457. We feel justified in recommending that the township be regarded as existing equally for the benefit of the reserve and the settled area, and that 700 acres, representing the half interest of the natives, be placed on what we have called the "free list", for which no compensation will be required.

458. The townships of Fort Hall and Kiambu are included in the Native Reserve and call for no special remarks in this place.

The Total of the "Free List."

459. The total of the land which we recommend for inclusion on the "free list" (i.e., land for which no compensation need be paid) is 3,000 acres, of which 2,300 acres represent land directly developed as mission stations and 700 acres represent the extent of the native interest in Nyeri Township.

CHAPTER XI.

RECOMMENDATIONS FOR THE SETTLEMENT OF THE KIKUYU CLAIMS UNDER THE 3RD, 4TH AND 5TH TERMS OF REFERENCE.

460. The result of our summary in Chapter VI was to show that altogether 265½ square miles of territory have been given by Government to the Kikuyu and 109½ square miles have been taken away, an apparent gain of 156 square miles to the Kikuyu. But after taking into account the comparative values of the land given and taken, we found that the value of what has been taken from the Kikuyu is greater than what has been given to them by a figure which we assessed as 19,520 acres of good agricultural land (*vide* section 225). But in our review of special cases in Chapter X we have found that there are 3,000 acres of this land for which no compensation need be paid because the land is devoted to services on behalf of the Kikuyu. The balance of land we recommend to be added to the reserve in exchange for land lost is, therefore, 16,520 acres.

The Acreage
recommended
to be added.

461. But this amount must be increased by 2,000 acres to be reckoned as a general compensation for disturbance; a further 1,000 acres in connexion with the admission to the reserve of certain Dorobo now resident in the Forest Reserve; and, if the conditions proposed for the Tigoni and Kithirioni exchanges are accepted, a further 1,522 acres to provide for them.

462. On these figures the total in favour of the Kikuyu becomes 21,042 acres. But in a calculation of this kind it is not possible to be exactly accurate, and we consider that it is better to name a round figure and call it 21,000 acres, and we recommend that this amount of land be added to the Kikuyu Native Reserve. This is exclusive of certain other areas which are already in native occupation and have been reckoned by us throughout this calculation, as explained in the notes and table in Chapter VI, to be already part of the Native Reserve, although their formal addition has not yet been concluded by gazettment. They are:—

Mwea : 205 sq. miles (addition approved by His Excellency the Governor in Council).

L.O. 4450 : 0.69 sq. miles.

L.O. 388/1 : 0.62 sq. miles.

A summary of our recommendations may now be given:—

463. We recommend : (i) that the Mwea area, L.O. 4450 and L.O. 388/1, comprising in all some 132,038 acres, be added to the Native Reserve; (ii) that a further area or further areas of a total

Recommendation for the Settlement of the Kikuyu Claims of Right.

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SETTLEMENT OF THE CLAIMS OF RIGHT

extent of 21,000 acres contiguous to the Native Reserve be added to it, the said total being comprised as under :—

	<i>Acres</i>
<i>Item</i> : Compensation for land lost to the tribe ..	16,520
<i>Item</i> : General compensation for disturbance	2,000
<i>Item</i> : In connexion with the admission of certain Dorobo to the Reserve	1,000
<i>Item</i> : In exchange for Tigoni	1,417
<i>Item</i> : In exchange for Kithirioni	105
	<u>21,042</u>
Less 42 acres discounted in section 462 above	42
	<u>21,000</u>

(iii) That Kithirioni cease to be a part of the reserve and become Forest Reserve, subject to the particular recommendations made in sections 400 and 402 above; (iv) that Tigoni cease to be subject to native rights and be unalienated Crown land at the disposal of Government subject to recommendations made in section 395 above; (v) that a sum of £2,000 should be paid to the Local Native Councils of Kiambu, Fort Hall and Nyeri, in such proportions as Government after inquiry may consider just, to be used by them for compensating Kikuyu natives who are still living outside their reserve under a valid claim of right under section 86 of the Crown Lands Ordinance, 1915, or under sections 30 and 31 of the Crown Lands Ordinance, 1902, or by prescriptive right; (vi) That in consideration of the compensation recommended above both in the form of land and cash, all rights claimed by the Kikuyu tribe or by any clan, group, family or individual of the tribe in respect of land outside the Kikuyu Native Reserve, as it shall stand enlarged as a result of our recommendations, shall be extinguished, except for such rights, if any, as may be secured upon title.

464. To this recommendation, which deals only with the settlement of existing rights and claims, we shall subsequently add another, in which we propose a further reservation of land to the tribe on economic grounds. This will be at a later stage in our Report after examining the economic requirements of the people. But the above recommendation is our finding regarding the settlement of existing disputes and claims.

465. We consider that it will be of advantage if we make some suggestion as to where the 21,000 acres are to be found. But we do not wish to preclude the consideration of alternatives. We ourselves shall not examine them, but it should not be regarded as in any way inconsistent with the general implementing

Proposals for
finding
21,000 Acres
for addition
to the
Reserve.

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of our Report if Government should select areas other than precisely those which we shall propose. We have only two qualifications to make : (i) we recommend strongly that the areas proposed for the Tigon exchange should be accepted, because any alternatives would lead to a re-opening of a discussion which has already been excessively prolonged; (ii) in several cases the land which we propose for addition to the reserve is already to a considerable degree in the occupation of natives who have rights. Items 9, 15, 16 and 18 below are instances. If these lands are not among the areas selected, the disturbance of natives will be the greater, and the figure of £2,000 set down as compensation for disturbance would need to be augmented.

466. We suggest that the 21,000 acres be comprised of the items set down in the table below. The reasons for selecting these particular areas will be given in the sections immediately following it.

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TABLE SHOWING PROPOSALS FOR FINDING 21,000 ACRES TO BE ADDED TO THE KIKUYU NATIVE RESERVE.

District	Locality	Description of Boundary	Present Status of the land	Area in Acres	Total for each District	Remarks
NYERI	1 Nyeri Hill	As surveyed	Forest	770	..	See section 453.
	2 In the Mount Kenya Forest Reserve: the tongue of forest near Chief Murigo's village	See Appendix No. 5 ..	do. do.	1,125	..	
3	In the Mount Kenya Forest Reserve between Sagana and Kagati Plain	do.	do. do.	500	..	
4	In the Mount Kenya Forest Reserve: the Narkothi hill area	do.	do. do.	2,000	..	
5	In the Aberdares: the Gikira River area	do.	do. do.	500	4,895	
FORT HALL	6 In the Aberdares: four areas in the Tusu Division ..	do.	do. do.	1,760	..	
7	Part of L.O. 325/R Saba Saba Limited	See Appendix No. 5 ..	Alienated Crown land	1,000	..	Exchange or Purchase recommended.
8	L.O. 1957 and L.O. 1958 near Saba Saba Station ..	As surveyed	Unalienated Crown land	893	..	
9	L.O. 4961 formerly known as Paul Clarke's farm ..	do.	do. do.	669	4,322	
			Carried forward	..	9,217	

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TABLE SHOWING PROPOSALS FOR FINDING 21,000 ACRES TO BE ADDED TO THE KIKUYU NATIVE RESERVE—(Contd.)

District	Locality	Description of Boundary	Present Status of the land	Area in Acres	Total for each District	Remarks
KIAMBU	10 In the Aberdares the Bathi River area		<i>Brought forward</i>	..	9,217	
	11 In the Muguga Forest Area...	See Appendix No. 5 ..	Forest Reserve ..	1,556	..	
	12 In the Ngubi Forest Area ..	do.	do.	3,900	..	
	13 In the Ngarariga Area: a corridor joining Ngarariga to the main reserve ..	do.	do.	800	..	
	14 In the Dagoretti Forest Area ..	do.	do.	200	..	
	15 Part of L.O. 185 and 186 the Church of Scotland Mission	do.	do.	670	..	
	16 L.O. 295/2/R being part of the White Sisters' land ..	do.	Alienated Crown land	2,000	..	Volunteered for surrender.
	17 The Eastern end of L.O. 134/4 being part of Njunu Estate	do.	do.	80	..	Purchase recommended.
	18 Part of the B.E.A. Wattle Estate in the Dagoretti area...	do.	do.	250	..	do.
	19 L.O. 1322 Dagoretti. . .	do.	do.	78	..	do.
		As surveyed	Township Reserve..	50	..	do.
UNALL- OCATED	20 Shortage to be made up as may be convenient ..	..	..		9,584	
		..	..		2,199	
					21,000	

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Description of
the above
Areas.

467. A description of the above areas is given in sufficient detail in Appendix No. 5, but in the case of areas recommended to be taken from the Forest Reserve we have contented ourselves with a general description and have attempted no precise delimitation of boundaries, since scope must be allowed for the exercise of discretion at the time of demarcating. The map at page 154 affords a general illustration of the proposals but, because we are not in a position to give exact details and because the scale of the map is too small to show them in any case, it must be regarded as a chart rather than a map.

Considerations
which have
determined
our choice.

468. Before framing our recommendations regarding the additions to be made by the surrender of certain areas of Forest Reserve we approached the Conservator of Forests. Consistently with his duties as Conservator he could not, of course, recommend the surrender of any area, but he stated that, if the Commission regarded it as absolutely necessary in justice to the Kikuyu to find areas up to 21,000 acres, he would see what could be done. After examining the situation he informed us that the areas shown in the schedule above represent the limit of sacrifice which he considered ought to be required from the Crown forests. In the case of Nyeri Hill he stated that the surrender ought not to be contemplated unless it is made a condition of its addition to the reserve that it be maintained as a native reserve forest reserve, in so far as the area now covered with timber is concerned. With this condition we are in full agreement, and we recommend accordingly. It is a condition to which the Nyeri Local Native Council had already agreed.

469. In regard to Item 10 the Conservator informed us that the destruction of some valuable forest would be entailed, and that it is only the extreme importance of settling the Tigonu question which induces him to contemplate the surrender as justifiable.

470. In regard to the remaining items he informs us that, generally speaking, he has selected areas which are scrub-covered rather than forest covered, but that it has been impossible for him to find so great an extent of land without a very considerable sacrifice of valuable timber-planting areas. He considers that it would be impossible to find any considerable further areas without a disproportionate sacrifice of the country's assets in Crown Forests.

471. We are most grateful to the Conservator for his full and frank statement of the position. We agree with the conclusion that the items shown in the schedule should be regarded as the limit of sacrifice which the forest should be required to suffer, saving only that, if in the course of demarcation further small areas can be found for the reduction of the deficit of 2,199 acres

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shown in Item 20, we should recommend that they should be included rather than that recourse should be had to the addition of unalienated farms.

472. We have no hesitation in recommending that the two unalienated pieces of Crown land near Saba-Saba Station known as L.O. 1957 and 1958 be included in the compensatory areas to be added to the reserve. They form an awkward salient into the reserve as at present gazetted and no application has been made for their alienation as farms.

Item 8;
L.O. 1957 and
L.O. 1958.

473. The inclusion of L.O. 4961, formerly Paul Clarke's farm, as part of the compensatory addition may be assumed to be a non-controversial matter which needs no supporting argument. The facts are set out in sections 434-437 above.

Item 9.

474. The area of 670 acres recommended to be added from the Dagoretti Forest Reserve comprises approximately 570 acres which are at present in temporary permissive occupation by those members of the *mbari* of Nyungu and others who were evicted from Karen Coffee Estate (see sections 408-413 above). The remaining one hundred acres are for the purpose of providing a corridor to connect the two thousand acres surrendered by the Church of Scotland Mission with the Ndeiya grazing area, so helping to consolidate the reserve.

Item 14.

475. We have recommended in section 428 above that the generous offer of the Church of Scotland Mission to surrender 2,000 acres of L.O. 185 and 186 be accepted. We commend to the especial attention of the administration the protection of the private rights of those natives who are living on the area to be surrendered or who may be in any way affected.

Item 15.

476. Under Item 16 we have recommended the purchase of 80 acres of the White Sisters' land. The reason has been stated in section 407 above. We pronounce no opinion as to whether this area could properly be held to be excluded from the lease on the ground that it was in native occupation or that natives have acquired prescriptive rights on it, but we consider that it would be wise to refrain from raising this issue and to buy the land at its fair value.

Item 16;
L.O. 295/2/R.
80 Acres.

477. There is a small projecting tongue of L.O. 134/4 jutting out into the native reserve from the main block of the Limuru farms. The history of it is given under *mbari* claim No. 67 standing at p. 308 of the evidence. In the circumstances there revealed we consider it just and expedient that this projecting tongue should be acquired by purchase and added to the reserve.

Item 17;
L.O. 134/4,
Njuru Estate.

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Item 18;
British East
Africa Wattle
Estate.

478. Our recommendation that 78 acres of the British East Africa Wattle Estate land from Dagoretti should be bought is based on the statement and plan in the précis (Evidence, pp.13-20). But, if Government does not think it necessary to buy the 78 acres, then we recommend that only the 20 acres be bought which are subject to native claims, and that the balance of 58 acres be provided in whatever way Government may prefer.

Item 19;
L.O. 1322,
Dagoretti
Township
Reserve.

479. Our recommendation that L.O. 1322 be included in the compensatory land to be added to the reserve and the reason for it have been given in sections 444 and 445 above.

The balance:
2,199 Acres.

480. The nineteen items which we have recommended to be added comprise 18,801 acres. The areas selected are conveniently close to populous parts of the Kikuyu Native Reserve, and are therefore a very appropriate set-off against the land lost. There remains a balance of 2,199 acres to be found.

It would be clearly desirable, if it is practicable, that in making up this balance land should be selected which is equally conveniently situated. But there is a limit to the amount of such land available.

We shall presently recommend, when we are dealing with the economic aspect of the Kikuyu land problem, that a very extensive addition be made to the native reserve in another, and somewhat remoter quarter, since no block of land of sufficient size is available in immediate proximity to the inhabited parts of the present reserve. In all the circumstances we recommend—

preferably (a) :—

That, if the land can be made available without difficulty, the balance of 2,199 acres be selected alongside the main reserve in the same way as the other blocks recommended to be added on grounds of right, and that this issue be kept separate from the economic issue and the extension which we shall recommend for that cause;

but, if that is impracticable, then (b) :—

That the balance of 2,199 acres be merged in the very much larger extension which we are recommending on economic grounds, and that no separate account be taken of it. In that event we do not consider that the Kikuyu would have been in any way ungenerously treated.

Certain conditions by which the above Recommendations must be held to be qualified.

481. Throughout this part of our Report we have been guided by the principles which we enunciated in the first chapter. We made it quite clear there how we regard the matter. The Government of the day, actuated by the desire to develop the country to the best advantage, embarked on a plan of alienating waste

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lands to be developed as farms, and took what it considered to be adequate steps to protect the natives from loss or undue disturbance. It was inevitable in so young a country that the information on which Government acted should be imperfect, and there were factors in the situation which were not appreciated. Not only was the native population more numerous than was supposed, but it had a conception of land-tenure in which group-rights had a recognized existence, and the dispositions made by Government caused in consequence a greater disturbance than was properly covered by the compensation which was paid. Little complaint was made at the time, and very little actual loss was caused to the generation immediately affected. But not only has the British Administration alleviated the forces which used to keep the growth of population in check, but the creation of a town and market at Nairobi and the provision of a block of European settlement round it have attracted large numbers of natives from areas further north and created a considerable measure of local congestion.

482. On balance of economic advantage the Kikuyu have gained considerably, but it is undeniable that difficulties have arisen about land.

483. We therefore concluded that, whilst we could not regard the Kikuyu as fully entitled as of right to full redress in the shape of an addition of equivalent land, they are in equity entitled to receive sympathetic consideration and we decided, because of the difficulties inherent in the situation described above, in the hope of putting an end to all past rancours, to recommend an addition of land equal in value to that which in our opinion they had lost, if the necessary land should prove to be available.

484. After a full and careful examination which has been set out in sufficient detail in Chapters II to V of this Report, we decided that the required acreage was 21,000 acres, including the land for the Tigoni and Kithirioni exchanges. And we have suggested certain areas where the required land can best be found.

485. It is of the utmost importance that the settlement with the Kikuyu should be definite and final and that, when these recommendations have been carried out, the matter of their past grievances should never again be reopened. If finality is not secured, our labours and those of many officers who have been working at the problem for many years will have been in vain. It is absolutely essential for the peaceful administration of the Kikuyu that these grievances should be finally put to rest. Unless we are sure that this will be done, we shall regret having set our signatures to this Report.

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486. We would point out that mere enlargement and re-gazetting of the boundaries will not secure finality. They were gazetted in 1926, but that did not prevent the Kikuyu laying claims to land outside them, nor the Attorney General from holding that possibly the claims might prove to be good. In our view nothing short of an Order in Council can secure finality. What is wanted is that, in return for the addition of land to the reserve equivalent to the land lost, all rights by Kikuyu to land outside the reserve, except rights held on title or rights held under customary tenure in some other reserve, should be extinguished.

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CHAPTER XII.

ECONOMIC NEEDS. A PRELIMINARY STATEMENT OF THE ISSUES.

487. In the history of Kikuyu claims of right which has just been completed the question of economic need was not included. Not that we failed to recognize that economic need may of itself constitute a claim of equal validity to a right based on historical grounds, especially in a country where Government is enjoined by Order in Council to have due regard to native interests. But we deemed it best not to complicate the issues, and we have therefore held over that aspect of the matter for separate consideration, to which we shall now proceed.

The Area
under Review
and the
Objects of the
Survey.

488. The object is to provide the answers to three principal questions :—

(1) To what extent the needs of the tribe in respect of land can be met by internal adjustment.

(2) Whether further extensions of the tribal boundaries over and above the extensions already recommended are likely to be required within the period which we ought to contemplate.

(3) Whether arrangements external to the reserve are required in order that individuals or groups may have facilities to use land outside the tribal boundaries.

489. While all these questions clearly fall within the scope of our terms of reference, in respect of the first of them it is not easy to fix the limits of the ground to be covered. We do not consider that we are expected to go into all the details of land tenure and economics, but there are certain aspects of the matter which we ought to cover as being vital to the general objects of our Report :—

(a) We cannot reach any useful conclusion as to the needs of the people in respect of land, unless we know how they use the land which is already theirs, and whether, in fact, a shortage of land exists or is threatened.

(b) An apparent shortage of land may often be due to a lack of skill in the use of land, and the possibilities of setting this right have to be explored before it is necessary to turn the eyes outward and look for more land. In so far as we think that the land is not being used to the best advantage we ought to say so.

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- (c) The lack of skill may be due to something more than a lack of agricultural and pastoral attainment. It may be due to some unsuitability in the land system which prevents the distribution of the population to the best advantage. It is, therefore, necessary to consider, in its broad aspects, the method of tenure, a duty which is specifically enjoined on us under the first term of reference.

490. We shall content ourselves with such a summary of the evidence as will make clear the reasons for our recommendations, but we shall not commit ourselves to any comprehensive survey of the economic position. Such a course would involve us in the acceptance or rejection of estimated figures which, as the witnesses who gave them are the first to admit, have not been so fully ascertained as to be free from challenge.

491. At the same time we draw attention to the mass of relevant evidence which is printed along with this Report, and express the belief that Government will find in it some very valuable material, which should be of great assistance to it in devising a policy and programme for future advancement.

CHAPTER XIII.

A SUMMARY OF THE ECONOMIC POSITION IN THE KIKUYU RESERVES.

492. The following summary of the present economic position seems to us to be justified on the evidence :—

(1) *Skill*.—Judged by European standards, the Kikuyu is not a good farmer, but he is well above the average of East African tribes. He has begun to respond to the tuition of the Agricultural Officers, and in Kiambu District the yield of maize to the acre is reported to have increased by twenty per cent in the last six years.

Summary of
the Present
Economic
Position.

(2) *Monetary Resources*.—The tribe has enough money to live according to the old standards, but not enough to enable it to attain to the new standards by which alone a healthy people, useful to the Colony as a whole, can be maintained. This lack of money is mainly to be ascribed to a lack of agricultural skill. But there are certain areas where there is a local congestion and a consequent lack of land.

(3) *Food Supply*.—The vegetable diet which the household derives from its gardens may be regarded as satisfactory, and is certainly well ahead of most other tribes and a great improvement on anything the Kikuyu knew before the coming of the white man.

The local meat supply is probably inadequate. The physique of the Kikuyu and the Masai have been compared in a report by Dr. Gilks and Dr. Orr, entitled "Studies in Nutrition. The Physique and Health of Two African Tribes" (Special Report Series 155, 1931). In this report it is stated that the Kikuyu are deficient in animal protein.

If the Kikuyu were skilled in stall-feeding they could keep more cattle, and if they had more cash and more markets they could buy more meat. And if they could get over their prejudice against goats' milk they would have more milk. But things being as they are, there is a deficiency in these things in spite of the full stocking of the reserve.

This is *pro tanto* an indication that the Kikuyu are living at too great a density for their present degree of skill and knowledge.

(4) *Stock Conditions*.—It is perhaps a point of doubt whether there is overstocking, but there is certainly very full stocking. Some areas are certainly overstocked. Relief could be found by killing off a portion of the male stock, but it would be imprudent at this stage to attempt too drastic a reduction, since there must be a reserve of grown cattle to augment the meat supply.

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(5) *Soil Conditions*.—The density at which the people are living has to a great extent prevented the practice of shifting cultivation and frequent fallowing of large stretches of land. While this will ultimately lead to a better and more economic use of land, there is grave risk that, until natives have adapted themselves to the new conditions and realized the necessity of deep ploughing and manuring, there will be considerable deterioration of the soil through exhaustion, and definite signs of this have already appeared.

(6) *Social Conditions*.—The tribal organization of the Kikuyu has never been strong. The main clans are scattered in small units. Even the *mbari* or family groups are often sub-divided. The process of disintegration is most advanced in the Kiambu District, where it is generally allowed by custom that a man may separate from his cousins and divide the *githaka*, and instances of partition, even between brothers, are beginning to appear. While these movements in the direction of individualism are perhaps to be welcomed as a sign of progress, nevertheless, some embarrassment has been caused by the rapidity with which the old institutions are breaking down and giving place to a civilization imperfectly understood by the people.

(7) *Conclusion*.—Congestion does not exist as a general condition, but only in certain areas and in certain particulars:—

- (a) There are fairly wide areas in which the population is living beyond the optimum density in the sense that, if it had more room, the cultivation per family would be greater. Local foci of congestion also occur in locations which are not congested over all.
- (b) The people in several parts are more thick on the land than is suitable to their present degree of skill in methods of combating soil erosion and exhaustion.
- (c) The present degree of skill does not permit of the people keeping sufficient stock for its requirements without overstocking and deterioration of the land.
- (d) Such congestion as exists is due rather to maldistribution of population and lack of skill than to lack of land, and an increase of skill may be expected for some years to result in a raising of the standard of life, even though the population is increasing.

Future
Prospects.

493. We have to consider the prospective needs of the natives, and cannot avoid making some estimate of future conditions. In a statistical sense our knowledge even of the present is very imperfect, although the wealth of material information which has been collected is remarkable for so young a country. While the figures have been useful in providing a focal point to which the

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attention of witnesses could be directed, we have been guided rather by the nature of opinions expressed upon them, especially by administrative and agricultural officers of experience, than by any cogency in the figures themselves.

494. The survey prepared by Mr. Fazan, District Commissioner, with the assistance of Mr. Leckie and Mr. Oates, Agricultural Officers, concludes with the following expression of opinion :—

“The future of the next thirty years or so may be imagined as a race between the tendency of a growing population to congest the land and a growing skill to make the same land support a larger population. During the earlier years of the period skill will be in the lead and result in greater individual prosperity. But the rate of betterment will decline and it seems likely that in about twenty years from now (unless remedial measures are taken) approaching congestion will depress the standard of life as much as growth in skill will raise it. After that a long flat top to the graph is the best we can expect. There is at least a possibility that depression may take place before equilibrium is established.

“Exports from the reserve should go on increasing for several years after the standard of life has ceased to improve, but must ultimately decline if a general congestion takes place.”

495. The survey was sent to the Director of Agriculture and the work of criticising it was entrusted to Mr. Blunt, Acting Deputy Director, whose reply, which is filed in evidence, indicates his full agreement with this opinion.

496. Mr. Vidal, the District Commissioner of Fort Hall, regards the figures as sufficiently accurate to justify conclusions being based upon them, while Mr. Pease, District Commissioner at Nyeri, states :—

“My general conclusion is that congestion in the more favoured areas of the Kikuyu proper is approaching rather more rapidly than is envisaged in the memorandum, since I think the increase in population reasonably certain and the increase in yield of foodcrops per acre distinctly problematic.”

497. We cannot but attach great weight to these opinions and the careful memoranda in which they are presented. Nobody pretends that the factors in the account are precisely ponderable or that fresh factors will not appear, but we cannot ignore what appears to be a well-grounded and apparently unanimous opinion by all the administrative and agricultural officers of the Kikuyu districts,

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that a state of general congestion such as will result in a depression of the standard of life is threatened within thirty years. If this is so, it is more imperative that all possible remedial measures should be adopted.

498. The survey expressly excluded from its scope the problem which may be created by the return of squatters from the European area together with their cattle. It is represented that there are about 110,000 Kikuyu now resident outside the reserves, most of whom are squatters. Although this figure has not been substantiated, we can take it as a sufficient general indication (*see note at the end of this chapter*). It is scarcely to be supposed that the European area will always afford accommodation for all the squatters and their natural increase or for their stock. While nobody can foretell how many extra labourers expansion of agricultural industry may be able to employ, there is at least an indication that the numbers have for several years been in excess of requirements, and there has been a set of the tide back towards the reserves. This tendency, although it may be only a temporary phenomenon due to the current depression, has caused a justifiable apprehension, and it is possible that it may become a problem of the first magnitude how and where accommodation is to be found for squatters who are surplus to the requirements of the European Highlands. Even a large expansion of industry would not so much solve the problem as give it another complexion, for while more labourers would be required, the enhanced value of the land would render it uneconomic for employers to allow large areas for squatter cattle, and it is probable that labourers on contract would begin to replace the squatters.

Note on the number of Kikuyu resident outside the Reserve.

499. Official figures given in the Annual Report of the Department of Agriculture for 1932 show 110,570 as the total of all "squatters", including their families, employed in agricultural or pastoral holdings in the settled area, but do not distinguish between tribes. It is well known that the Kikuyu preponderate. There is also an official estimate of labourers other than squatters. This was prepared by the Native Registration Department and shows 40,685 Kikuyu native labourers outside the reserve in November, 1930, who are not counted as squatters. The view taken in the memorandum, we believe rightly, is that many of them have their families with them. There are also considerable numbers of Kikuyu living in the Masai Reserve and at the Coast. We see no reason to doubt the general accuracy of the statement that the number of Kikuyu now resident outside the reserve is in the general neighbourhood of 110,000, and supporting calculations are given in the memorandum, which has been filed with the original record of the evidence.

CHAPTER XIV.

A DISCUSSION OF MEANS BY WHICH A BETTER USE COULD BE MADE OF THE LAND.

500. If the Province is considered as a whole, including the Embu and Meru Districts, the land appears to be sufficient for the people in the near future, and it is important to consider whether a more even distribution is practicable as a means of solving the problem. Even in Kikuyu proper the occurrence of local congestion would be relieved if more use were made of the sparsely inhabited land along the western border and in the Mwea area. But the desired movement is away from Nairobi and the farm borders and exactly contrary to the present tendency and the direction of economic pull. An early change of direction is not probable, and even an addition of land to the reserve would only mitigate the situation to some extent. There seems to be every prospect that, as a permanent condition, the native population in the parts of the reserve which are nearer to Nairobi will be living in a degree of density which will put a severe strain on the structure of native society including the *githaka* system.

Possibilities
of a more
even Distribu-
tion of
Population.

501. We need not concern ourselves with examining the administrative and agricultural measures which may partially alleviate the position, except to say that some valuable suggestions have been made in evidence. But there are aspects of the case which may call for modifications in the system of land tenure, and these fall more directly within our province.

502. We have been asked to say whether the system of land tenure for natives should be on tribal or individual lines, and we are also asked to comment upon the working of the Lands Trust Ordinance. A point which cannot fail to impress itself even on the most casual inquirer is that, in the conditions of density which are threatened, it is absolutely imperative that the land should be used to the best advantage, and that this is not only a problem of agricultural utilization, but is also, and perhaps equally, a problem of land holding. There must be no doubt as to who is the responsible authority for dealing with it, and it is clear that we cannot usefully criticise the working of the Ordinance unless we know the nature of these problems and the manner in which the responsibility is being discharged.

503. The land system of the Kikuyu is generally known as the "*Githaka System*." It is fully described in the report on "Native Land Tenure in Kikuyu Province" by the Committee appointed in 1929, which we accept in general, as we have stated

The Githaka
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elsewhere, as an accurate account of the matter. It is not, therefore, necessary to describe it in detail; but for the sake of easy reference, we give in Appendix No. 6 a number of extracts from the report, arranged in such a way as to give a concise account of the system and especially of those aspects of it to which we shall have occasion to allude.

**Recognition of
the Githaka
System.**

504. The effect of that report and of the evidence before us is to suggest that the *githaka* system is extremely ephemeral. There is no evidence whatever to show that even the word *githaka*, which means bush, had acquired any technical significance when the Protectorate was declared. If the system has been correctly defined as "the methods of clan and patriarchal control expressing themselves in relation to the land", it does not seem to have been very recognizably established as a method of land-holding in an agrarian sense even when some of the witnesses who have appeared before us first came to this country. The extent of its manifestation appears to have been rather in the nature of a political suzerainty over ridges. And yet, a bare forty years afterwards, we find that, at least in so far as the Kiambu District is concerned, it is already in its decay. For the methods which have come into use in that district are already a long way removed from those of clan and patriarchal control. They may mark an advance, but they are certainly a departure.

505. What then is meant by recognizing the *githaka* system? Does it mean that the authentic system must be ascertained and followed, and that no new departures or transition to another form are to be allowed? This is certainly not what is meant. It would perpetuate a system which is in many ways unsuited to modern conditions, and erect a barrier against future progress. We are satisfied from the evidence and memoranda before us that the opinion of all administrative officers concerned is unanimous on the point of principle. The principle is that it is better to take the native customs as they stand and build from them as a basis than to rely on some novel but imported pattern which would not be understood. But the need for progressive moderation and control is recognized.

**Certain
Difficulties.**

506. The Report mentions certain ways in which the *githaka* system is ill-adapted to modern developments, and cites especially difficulties in connexion with small holdings: security for tenants; the proper use of pasture; permanent buildings, social service centres; and townships.

**Smallholdings
and Sub-
division.**

507. In respect of small holdings, it would be a complete misunderstanding of the position to assume that there is any intention of splitting up *ithaka* in order to create small holdings. It would be truer to say that the reverse is the case, and the problem is

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how to prevent *ithaka* from becoming disintegrated, and being turned into small holdings, which may again become sub-divided until they are uneconomic. The danger is not so great in the other districts as it is in Kiambu, since in theory at least the *ithaka* remain intact and some power of redistribution remains with the *muramati*. Nevertheless, the division of right-holdings by inheritance between all the sons may easily congest the holding, and the practical scope of the *muramati* to adjust matters is already small and will be increasingly limited as shares are more precisely defined.

508. But the worst difficulty appears in Kiambu, where custom allows of the partition of *ithaka* between cousins, and there are many examples of still further partition into small family holdings of a few acres in extent. When they become overcrowded, superfluous right-holders may agree to go elsewhere, but they will be less willing to do so as the difficulty of finding other land becomes more pronounced. Even if they go, their rights remain and descend to their heirs, though a practical limitation prevents their returning to the land if there is not room for them. The position is particularly embarrassing when permanent crops and buildings are in question. The Report on Land Tenure in Kikuyu, while regarding the problem as a difficulty of the future rather than of the present, admits the need for regulation, and remarks that "the problem is not remote, but very near" (Chapter 3, para. 28).

509. It might be thought that congestion of this nature would tend to correct itself under the stress of poverty. But a man is not necessarily poor because of the small size of his holding, since he may keep as many stock as he likes on the common pasturage.

510. A similar question receives attention in the Report of the Royal Commission on Agriculture in India (1928) and the following opinion is stated (p. 130):—

"The sub-division of right holders' holdings is apt to be carried to such an extent that the resultant holdings become too small to maintain the right-holder and his family in a standard of comfort vaguely described as reasonable."

511. While it is obvious that this practice of sub-division is calculated to aggravate the problems of local congestion, attempts to govern it by rule might result in an undue dislocation of population at a time when other agricultural right-holdings are hard to get, and there are no derivative industries in the reserve capable of absorbing any considerable number of the population.

512. Nevertheless, the position may become so serious that, if the terms of tenancy can be rendered more attractive, many right-holders on overcrowded *ithaka* may prefer to go and live as

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tenants on the *ithaka* of others, and it is probable that an indirect approach to the solution of the problem may be found along these lines.

513. We invite special attention to remarks which stand in evidence on the subject of "dependent impartible holdings" (Evidence, pp. 1096-1098). The suggestions are worthy of study, but it is clear that any advance along those lines would have to be very cautiously made.

Fragmentation.

514. An heir who inherits both from his father and his uncle gets two holdings. The process is cumulative and there are many heirs who have several (perhaps a dozen) fragmented holdings which it is impossible to consolidate. There is no doubt whatever but that many of these fragments are very small and in the next generation will be uneconomic. While an excuse might perhaps be found for not tackling the problem of excessive sub-division on the ground that possibly a landless class might be created prematurely, there is no such argument against the consolidation of fragmented holdings. There is nothing whatever against it except its difficulty. Again, the Report of the Royal Commission on Agriculture in India gives us a forewarning of what we have to expect, unless remedial measures are taken:—

"Where the soil is of uniform quality or where the differences in quality are not great, fragmentation is an evil of the first magnitude."

One witness stated: "The agricultural holdings of the Bombay Presidency have to a large extent been reduced to a condition in which their effective cultivation is impossible."

The Commissioners concluded: "Fragmentation of holdings is in many parts of India one of the most important factors tending to prevent agricultural improvements. There seems to be common agreement that its evil effects are so great that the administration should not rest until a remedy has been found . . . The initiative should not be left to the spontaneous action of the right-holders . . . Difficulties should not be allowed to become an excuse for inactivity." (pp. 142, 144.)

515. These factors are present in Kikuyu in a far less acute form, and there is time for more detailed study before action is taken. Nevertheless, the evidence given to us by the Agricultural Officers inclines us to believe that the position is serious, and that some regulation will be necessary. The suggestion made to us at our informal meeting with the Provincial Commissioner and District Commissioners at Nyeri was that the remedy could probably be found by increasing the powers of the *muramati* to consolidate holdings on his *githaka*. Such a method would be in

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conformity with the general policy of developing the native system and meets the difficulty to a certain extent. But the root of the trouble is that the fragmented holdings of one man are often situated on several *ithaka*.

516. The practice of outright sale, which applies in the Kiambu District, will probably help to check fragmentation in that district, although it may be expected to bring other difficulties of its own.

517. We are of opinion that more security must be found for tenants and that they should not be evicted without compensation. We also find it necessary to recommend that right-holders on sparsely occupied *ithaka* should not be allowed to refuse tenants without good cause. In view of the terms of the trust it must be held that every Kikuyu has a right to live in the reserve in reasonable security, and the *githaka* system must not be so interpreted as to refuse that right to anyone. Tenancy.

518. Sales of land take place only in the Kiambu District, while the practice in the Nyeri and Fort Hall Districts is redeemable barter, which is the normal native custom. The difference is the result of circumstances and we see no reason why either area should be asked to imitate the other. Sale.

519. It would be a retrograde step to try to force the Kiambu Kikuyu back from the considerable degree of individualism to which they have attained in their tenure of land. The draft rules prepared by Mr. Maxwell, the late Chief Native Commissioner, have been shown to us, and we note that the intention is to regulate sales of land by requiring the prior sanction of the Provincial Commissioner, a precaution which appears to us to provide an adequate safeguard.

520. It is clear to us from the evidence that the Kiambu District has for many years been used, as it were, as a sort of expansion area into which the Fort Hall District has poured some of its surplus population. In spite of approaching local congestions, which are already threatened, the force of the economic pull towards Nairobi is likely to continue for some time after an embarrassing degree of density has been reached. It is probable that a reasonable facility to buy and sell, under adequate safeguard, will help to preserve fluidity and assist the population to distribute itself to better advantage.

521. If the practice of sale did not already exist in the Kiambu District it is improbable that we should go the length of recommending its introduction. But it does exist, and we think that, properly regulated, it is likely to be useful.

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**Tribal *versus*
Individual
Tenure.**

522. As far as we can see from the evidence, the Kiambu District is already launched on a system of tenure quite exceptional in tribalism. It is not yet individual tenure, since the rule still seems to be that cousins separate, but brothers do not, and the group is therefore rather wider than a single family. And it is not even, in all respects, private tenure, since a right of communal pasturage remains. But these restrictions are disappearing, and individual tenure is well in sight.

523. On the issue of tribal *versus* individual tenure we shall say no more than : (a) that in all the Kikuyu Districts the tenure is certainly not tribal, but is a species of group tenure ; (b) that the groups are likely to become smaller, and that in the Kiambu District individual tenure is well in sight ; (c) that while the devising of an adequate means of control may well tax the ingenuity of the Administration, yet the emergence of individual tenure in the Kiambu District must be expected at no distant date, and it is likely that it would be neither wise nor practicable to try and prevent it.

**Plots for
purposes of
Trade or
Social
Service.**

524. Among the greatest difficulties which arise under the *githaka* system is that there is no recognized method of setting aside areas for public purposes, which can well be copied. It is true that there were arrangements for the creation of public dancing grounds and for markets, but they do not afford much help. The whole matter is intricate, and we reserve it for discussion in the third part of our Report, in which we shall deal with it comprehensively in relation to all the native reserves. While the difficulties encountered in securing land for purposes of social service are greater in Kikuyu than elsewhere, they are not, generally speaking, so different in kind as to demand separate treatment. But the exceptional complications which have arisen about school and church plots in this Province require special attention.

**School and
Church Plots.**

525. We have had the advantage of hearing the evidence of the Director of Education and also of the Kenya Missionary Council and other witnesses, and we have been informed of various resolutions which have been passed from time to time by the Local Native Councils and the Kiambu School Area Committee and the Local Land Board. While we have not ourselves had time to make so close a study of the subject as would justify us in dealing with it in the body of our Report, we wish to record our general agreement with the conclusions reached by Mr. Fazan in a review of the subject which he has submitted in evidence, and which we have included as Appendix No. 7 to our Report.

**Grazing
Commonages.**

526. While we realize the difficulties of creating private rights in areas such as Ndeiya and Mwea, where none are at present

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recognized, yet we consider that large areas should not be used exclusively as grazing commonages, since they lead to large accumulations of live stock far away from the homes of their owners, where they are useless as a source of milk supply; while, so long as the right of grazing remains common, no attempt is made to spare the land or the pasture, which rapidly deteriorates. The appearance of private rights similar to those obtaining in the rest of the reserve would be generally desirable if a suitable method can be found.

527. The common right of pasturage over *githaka* land also leads to over-stocking, since small regard is had to the carrying capacity of the land. While it would not be practicable to advise that the practice be stopped, we regard the appearance of private paddocks, of which a few examples already exist, as a feature to be encouraged under suitable safeguards.

528. We have to face the fact that, unless remedial measures are taken, a state of general congestion is threatened within thirty years. There is, therefore, an urgent need for the best attainable distribution of the population on the land, and it is clear that a great amount of agrarian adjustment has to be made, and that the time is limited. On the other hand the whole nature of the problem calls for caution, and it is quite impossible that the proper steps, which must largely depend for their success on a progressive education of the people, can be undertaken in an atmosphere of hurry. The responsible authority, therefore, has a very delicate task in deciding the rate at which it is prudent to proceed.

The rate at which Reform should proceed.

529. In the correction of faults in an indigenous system drastic innovations are unwise. The path to be followed is that of progressive amelioration, and there is no reproach if the measures adopted bear a certain stamp of impermanence and improvisation. The task of directing a course of evolution is not a simple one, and steps must necessarily be tentative and nothing must be irrevocable.

Amelioration must be progressive, but gradual.

530. It is apposite to quote from a minute written by Sir Thomas Munro on the land question in Madras in 1884 :—

“It is a dangerous system of Government in a country of which our knowledge is very imperfect, to be constantly urged by the desire of settling everything permanently, to do everything in a hurry, and in consequence wrong, and in our zeal for permanency to put the remedy out of our reach.”

531. In the third part of this Report, when we are dealing with the working of the Lands Trust Ordinance, we shall have to consider various suggestions which have been made by witnesses

The Method of Executive Control.

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for the distribution of functions as between the Lands Board and the Provincial Commissioner. It must be obvious from the considerations just advanced that the Lands Trust Board cannot possibly have the necessary local knowledge and that the internal control of land administration as between native and native should be a direct responsibility of Government, which it would discharge through the Provincial Commissioner as the responsible head of the Province, and in accordance with rules to be made under the Ordinance. Subject to modifications of detail to which we shall refer in another place, our recommendations will accord with this principle.

532. The Provincial Commissioner would therefore be the responsible authority for directing the course of evolution of the *githaka* system, just as he is now the final Court of Appeal for Native Tribunal cases which arise in connexion with it.

533. This combination of the administrative and judicial responsibility in the administrative head of the province is certainly to be recommended at this embryonic stage in the emergence of private rights. They have not yet reached the stage when the Courts of the Colony could be usefully invoked to protect them.

534. After hearing the evidence and examining the records we are satisfied that the *githaka* system requires to be regulated in certain aspects.

535. At this stage, when it is still necessary to proceed by a method of trial and error, we question the wisdom of regulation so rigid as to preclude special settlements for special cases. Rules of practice may in many ways be preferable to rules of law, and practice can often be guided into the right channels under the advice and supervision of the Administration. When new facilities such as paddocking, introduced at first by the enterprise of individuals, are proved to be beneficial and to require protection and regulation, rules can be made. Nevertheless, we are satisfied that there are several features of the *githaka* system which require to be regulated without delay, and we invite particular attention to the evidence which has been given to us on the subject (see pp. 1051-1069 and 1096-1098 of the printed evidence and pp. 388-435 of Volume 10 of the Original Record). We believe that in this Province there is a danger that the policy of *laissez faire* may be carried too far, and that an indiscriminating respect for native custom will result in uneconomic fragmentation and consequent depression of the standard of life.

Rules to
regulate the
Githaka
System.

CHAPTER XV.

REQUIREMENTS EXTERNAL TO THE RESERVE.

536. The effect of the economic evidence is to suggest that something in the nature of a general congestion is threatened in the Kikuyu District within thirty years, unless very great improvements in agricultural method and the holding of land take place. Improvement in so high a degree cannot safely be assumed, and it is apparent that we cannot rely on internal adjustment alone, but that facilities in land external to the reserve will have to be found.

537. We shall pass briefly in review the various forms which this assistance might take.

538. We have recommended block additions amounting to 21,000 acres to be made permanently to the reserve in settlement of the claims of right. This addition has been recommended for the removal of grievances, and not on economic grounds. It will have a certain economic effect, in that it will help to knit the reserve more closely together by the elimination of the "islands" of Tigonu and Kithirioni and by joining the existing "islands" of Lari and Ngarariga by corridors to the main reserve. It is also to be hoped that the better spirit which is likely to be engendered in the Kikuyu by the settlement of their past grievances will make them more amenable to the advice and instruction given them by administrative and agricultural officers. But as a direct contribution to the solution of a problem of incipient congestion the addition of these compensatory blocks is clearly inadequate, and needs to be supplemented by the addition of further blocks on economic grounds.

**BLOCK
ADDITION.
(1) The Com-
pensatory
Blocks.**

539. It is clear that no addition of territory, however large, can by itself solve problems caused by density of population, if the population continues to increase. All that it can effect is a certain saving of time, and the value of the addition depends on the use made of the time.

**Block
Addition.
(2) An Addi-
tion recom-
mended on
Economic
Grounds.**

540. If a population is showing signs of becoming economically minded; if it has begun to sweep aside agrarian restrictions which have lost their uses and devise others which ensure the occupation of the land to better advantage; if it has realized the futility of trying to secure particular pieces of land by a sort of entail to the same family for ever; if it has begun to build up derivative industries on the basis of agriculture instead of expecting every family to be supported directly from the growing of crops; if it is showing a tendency to delay the age of marriage

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until the means of supporting a family are apparent, and if in consequence the rate of population-increase has begun to decline; if all these conditions exist, then a respite of a few years may be very useful so that: (i) the economic lesson may be better learnt; (ii) the agrarian adjustments may be effected, and (iii) congestion may not occur until the rate of increase has slackened and so simplified the problem.

541. It is true that, whether such addition is made or not, an equilibrium would eventually be reached, but the danger that the final equilibrium will be a low-grade population living on impoverished soil is somewhat diminished if the addition is made and a respite secured. But it is obvious that the economic adjustments for which the respite is desired would take a very considerable time.

542. After considering these matters and having regard to the actual areas available, we think that the addition of an area of some 350 to 400 square miles is warranted, and would be of very substantial assistance to the Kikuyu in affording them a respite during which they must learn to improve their methods of agriculture and land-holding so that, when the existing degree of density is again reached, they will be better able to face the position. We recommend that this area be found on the northern Yatta in the general position shown on the map here following. The extent of the area as shown on the map is 383 square miles. We recommend that the addition be made to the Kikuyu Native Reserve as Class B1 (*see* section 23 above).

It will be observed from the map that L.O. 7048 forms a salient into this area. It is 33 square miles in extent, and is land for which Messrs. Swift and Rutherford applied in order to undertake a large sisal growing enterprise. But in 1931 the application was withdrawn, although the possibility was envisaged that at some future date the application might be renewed.

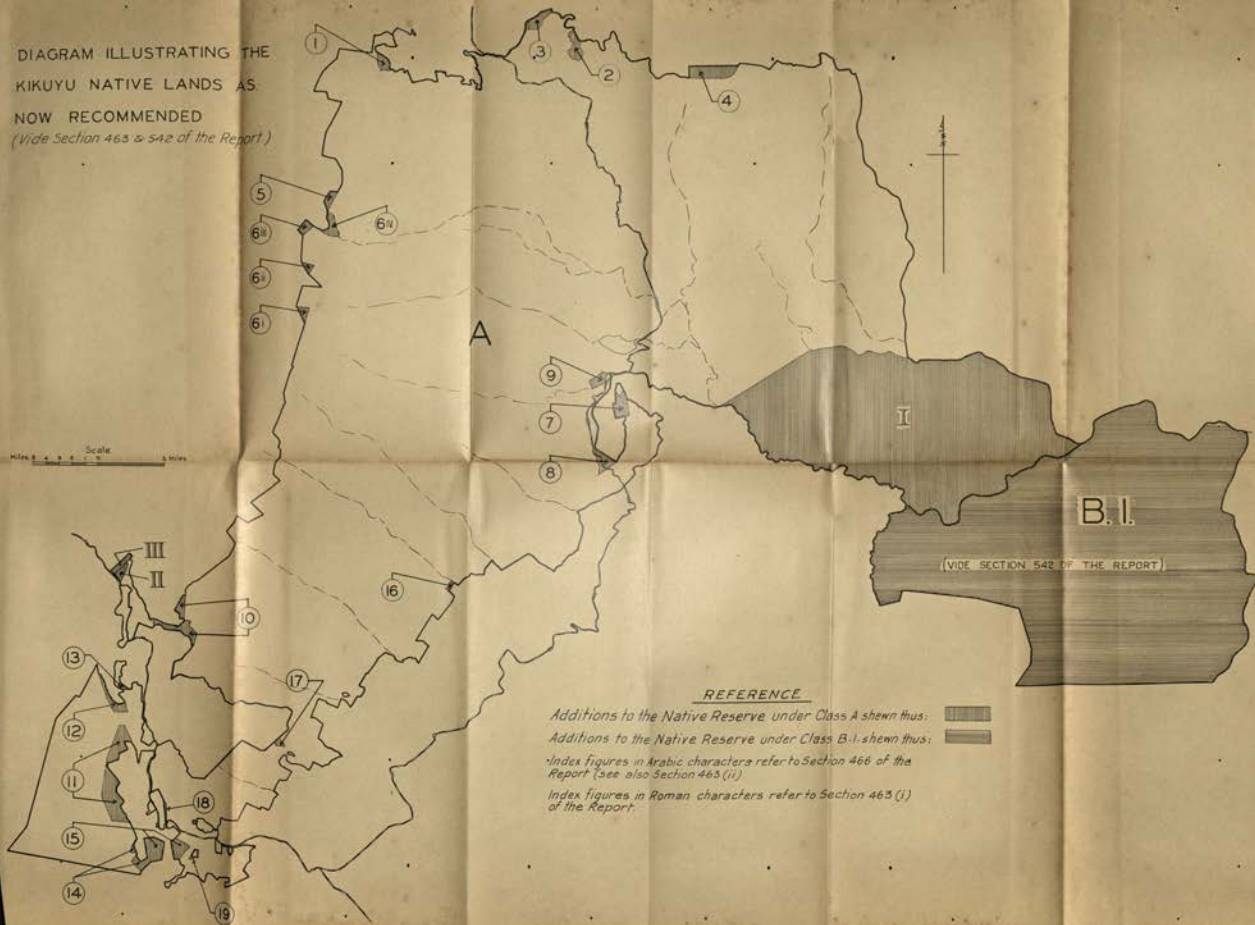
We have agreed to consider that this area should be regarded as a "D" area (*see* section 25 above) and that its future destiny should be determined by the course of events; the Chairman would, however, have preferred that it should have formed part of the extension to the Kikuyu with the proviso that it should be regarded as especially an area in which non-natives should be encouraged to take up land and that consequently it should not be included in the first blocks for Kikuyu settlement.

543. It is essential that the land to be added must be used in such a way as to assist in the learning of economic lessons. It should certainly not be reserved as a commonage to the tribe. Such a course would be retrogressive and injurious both to the soil and to the people.

Utilization of
the Block
Addition on
the Yatta.



DIAGRAM ILLUSTRATING THE
KIKUYU NATIVE LANDS AS
NOW RECOMMENDED
(Vide Section 463 & 542 of the Report)



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An essential preliminary to native settlement in the area is a careful survey both of soils and of the possibilities of irrigation or other means of improving the water supply.

When that has been done, we are of opinion that the next step is to mark off a block or blocks for occupation by natives under a prepared scheme of land settlement. Having considered the matter at length and heard arguments on both sides, we think that it would be a mistake to open up the whole area at once, but find it preferable that settlement of the natives on the land should proceed under careful supervision, a block at a time.

544. We recommend that the method of control should be somewhat on the following lines. The Provincial Commissioner should have control but should be assisted by a special committee consisting of the District Commissioners and the Senior Chiefs and representatives of the various divisions of the districts of the province, whom he might consult either collectively as a full committee, or by districts. We also recommend that one of the district officers, in addition to his ordinary duties, should hold a special appointment as Land Settlement Officer of the area to work under the orders of the Provincial Commissioner. This officer should pay frequent visits and keep any books or registers which may be found necessary.

545. Private tenure already obtains in Kikuyu and its development should be encouraged. Consideration should, therefore, be given to the manner in which private rights may be created in the new area.

We consider it advisable that the system to be adopted should admit both of group or family tenure on lines related to the *githaka* system, and also of holdings on more individual lines, and the proposals which we make in respect of tenure in "C" areas in a subsequent part of our Report (Part III, sections 1880-1935) would be generally suitable to this area also. But no rent should be charged for homesteads, by which we mean land sufficient for the normal requirements of a household. If, however, natives desire to take up land in excess of such requirements, for the purposes of ranching or some similar enterprise, we agree that a rent should be charged and applied to the development of the area.

At a later stage, when there is a sufficient resident population, a local Native Council could be formed, and the advisory committee to which we have referred, might no longer be required.

546. It is most important that the land, both in the allocated blocks and in the blocks awaiting allocation, should be protected

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against misuse. The conditions of tenure should contain adequate safeguards against over-stocking of the land and against the wanton destruction of timber.

A small, but perhaps important, point is that we consider that the word *githaka* should not be used, since it appears to us advisable that the natives should realize that there is a distinction between this land and the reserve.

547. We hope that these suggestions may be of use; we invite attention to the evidence given on the subject (Evidence, pp. 1071-1096) and we also recommend that information be sought concerning the work of Land Settlement Officers in India. Nor must the possibility be neglected that the Kikuyu Local Native Councils may themselves have useful suggestions to make; but we should be more hopeful of this if some better use for the Ndeiya area of 74 square miles had been found than to keep it as a grazing commonage ever since it was added to their reserve some twenty years ago. It would be a disastrous misuse of land if this mistake were to be repeated in the case of the Yatta.

Necessity for
getting the
land into
Use.

548. The purpose of the addition is to provide an extension area for the Kikuyu. It is therefore neither probable nor altogether desirable that large numbers of natives who now have land in the reserve should leave these lands and settle in the extension area. On the other hand it is of importance in the general interests of the country that land should be brought into use. It will be of assistance to the Kikuyu in settling the area if a few large enterprises managed by companies of proved reliability are allowed and even encouraged to take up land on favourable terms, especially where the adequate development of the land requires large capital expenditure. Such enterprises will provide a nucleus round which Kikuyu settlements may be expected to spring up, attracted both by the prospect of employment for their young men and also by the presence of a ready market for their produce. It will probably be found that companies of this nature will wish to hold their land on some better security than short term leases, and we consider that, if necessary, leases for ninety-nine years should be allowed. Nothing in the nature of ranching propositions should be entertained.

The Squatter
Population.

549. In judging whether this provision is sufficient or insufficient we must not neglect to take account of the fact that large numbers of Kikuyu, estimated in section 499 above at about 110,000, are living outside the reserve, for the most part as squatters on European farms. Their rate of natural increase is at least as high as in the reserve, where it is computed to be 1.6 per cent per annum. That would mean that as many as three hundred and fifty families of five could return to the reserve in a

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year without any diminution in the total, since the loss would be made good by natural increase. According to the survey on the rate of population-increase in Kikuyu which stands in evidence and was calculated on the basis of hut counts and records available in annual reports, that has been the approximate position since 1928 (Volume 10, pp. 18-132 of the Original Record of the Evidence). The number of squatters outside the reserves is represented as almost static, which indicates that they are returning to the reserves in numbers equivalent to the rate of natural increase.

550. Questionable though the figures are admitted to be, the general conclusion is endorsed by the opinions of the Administrative Officers who have given evidence on this point, and also by the Chief Registrar of Natives, who, however, ascribes the present position to the prevailing economic depression.

551. Although the present position may be due to economic depression, it seems to us a prudent standpoint in facing an uncertain future that we should not expect, on a balance struck over a number of years, that the settled area will be able to afford any substantial relief in absorbing the surplus population of the reserve. It seems more probable that the general flow will be the other way, and that there will be a considerable number of families discharged annually from the settled area, for whom accommodation will have to be found.

552. These considerations suggest that, while the reserve, together with the extension which we have recommended, should be sufficient to provide for its own natural increase of population, it may not be sufficient to provide both for them and for returning squatters. While it follows, if that be the case, that other facilities must be found, it does not follow, and in our opinion it is not desirable, that they should be found by a still further addition on tribal lines.

553. In Part III of the Report we shall recommend certain areas to be made available in which returning squatters or natives who wish to leave their reserves may be able to take up land on reasonable terms. The class of persons most likely to apply would be those who have acquired a higher degree of individualism than the generality of natives, and it is more likely that they would be suited by a provision of land which they could take up as family units than by a large block to be managed on tribal lines. As a natural process the holdings of families of one tribe would tend to be grouped together, and there seems to be no need for special safeguards. Some degree of intermingling would probably be advantageous.

External
Facilities on
Individual or
Family Lines.

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Certain unused Land in the Masai Reserve.

554. There are extensive areas of good agricultural land in the Masai Reserve in proximity to the southern border of Kikuyu. The Masai make no adequate use of them, and it might be considered that a lease to the Kikuyu should be arranged. But it is unlikely that the Masai would agree, and any attempt to force their hand, besides being in contravention of the agreement of 1911 which is specially preserved in section 8 of the Lands Trust Ordinance, would probably lead to ill-feeling which might tend to prevent the very considerable penetration by Kikuyu into Masailand which at present takes place by a natural process which is to the advantage of both tribes.

Penetration into other Reserves.

555. Not only do large numbers of Kikuyu women get married to Masai and Kamba husbands, but they often invite their relations to follow them, and in a general way, so long as the pace is not forced, both tribes are agreeable to this arrangement. To a less extent there is a penetration by Kikuyu into Ukamba. These movements do not occur to an extent which could in any way threaten the general security of the tribe into whose land the penetration takes place. On the contrary it probably increases security by creating better relations between the tribes concerned.

General Comment on the Solution of the Kikuyu Problem.

556. The density at which the Kikuyu are living is altogether exceptional for Africa, and it is not surprising that land problems of great difficulty should have arisen. We have not therefore thought it disproportionate to devote a third part of our report to their solution. We first addressed ourselves to the task of finding a just settlement for existing grievances and then turned to the question of economic needs. In order to provide for these needs we have made proposals partly on tribal and partly on non-tribal lines. For the majority of the Kikuyu the shelter of the tribal system will be necessary for many years and probably generations to come, and we have, therefore, recommended a substantial extension of the tribal territory. This will enable them to expand until they have had time to learn more skill in the use of land and make the land capable of carrying a larger population without impairment. For the increasing number who will in course of time desire to leave the tribal territory and go to areas where they may hold land on more individual lines, we shall make proposals in Part III of this Report that extensive areas be set aside in which natives shall have prior rights of taking up land on lease. Finally, we shall recommend that the reservation of land to particular tribes shall not be so rigidly interpreted as to prevent a safe extent of peaceful interpenetration, in so far as the occupant tribe does not object and in so far as the customs of land-holding permit. This will give greater fluidity, and to some extent alleviate the difficulties arising from the present maldistribution of population on the land.

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557. We believe that these remedies, taken together, will enable the Kikuyu to face the future with every prospect, if they use their opportunities, of becoming a prosperous tribe.

558. We wish to invite attention to the fact that, while on balance of value for value the Profit and Loss Account has revealed a small loss to the Kikuyu amounting to 21,000 acres, which we now recommend to be made good, yet, if the balance be struck simply on extent of land, the territory which the Kikuyu now occupy is much greater than that which they occupied before Government came. Actions taken by Government at a time when information was very imperfect may sometimes have resulted in hardship to the Kikuyu, owing to misconceptions of the numbers of the population and their system of land tenure. But the result of our examination has been to convince us that the hardships suffered by the tribe have been vastly exaggerated, and that the present economic problem, which is one of population-density, is not directly due to Government action in constricting the boundaries, for they have in reality been expanded. But the economic expansion of the country has inevitably drawn population towards the main centres of trade and employment, while the prevention of famine and tribal wars and the better control of epidemics has removed the principal checks on population-increase.

CHAPTER XVI.

LAND PROBLEMS OF THE MERU AND EMBU DISTRICTS.

Contrast of the Meru and Embu Problems with those of Kikuyu Proper.

559. In the fifteen chapters just completed, we have dealt with the problems of the three districts of Kikuyu proper, an area of 1,931 square miles, inclusive of the Mwea area, with a population of approximately 489,156 persons living at a density of approximately 253 to the square mile (*vide* section 67 above). In contrast to them the Meru and Embu tribes, who are also of the same Province are a population only about half as numerous, inhabiting an area more than twice as large. Since the Protectorate was declared they have been singularly free from disturbance of any kind and they have no very serious or difficult land problems. There are, however, a few matters which require to be mentioned shortly.

The Boundary of the Meru Native Reserve.

560. The proposed boundaries of the Meru Native Reserve were published for general information in 1925, but subsequently a modified boundary was approved, which had the effect of excluding the Tharaka settlements at Mutejwa, Kikingo and Matha from the Meru Native Reserve. It was supposed at the time that the excluded areas were very sparsely occupied land in which the Meru could not be said to have any legitimate claim. Subsequently representations were made which caused a reconsideration of the matter, and a reversion to the boundaries as provisionally gazetted in 1925 was approved by the Governor in Council in March, 1928.

561. The natives were informed of this decision and the boundaries then recommended are being observed in practice. We recommend that the gazetted boundaries be amended to conform with them. We understand that it is only because of certain formal difficulties in the Lands Trust Ordinance that this step has not already been taken, and at a later stage in our report we shall make proposals whereby this obstacle may be removed.

562. The area affected in this case is 626 square miles.

Land claimed between the Luguthu and Morania Rivers.

563. There is a piece of land which the Meru claim to the westward of their reserve. It is a strip between two rivers, both of which are often called the Morania, although it is correct to call the western river the Morania and the eastern the Luguthu. The Luguthu is the boundary of the reserve as gazetted in 1926, but the Meru claim the land as far as the Morania.

564. In 1911, when it was thought with apparently good reason that the land between these two rivers was Meru land and

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would be included in the Meru Native Reserve, the District Commissioner diverted the Luguthu by a furrow so that it ran further east through the grazing land of the Imendi section of the Meru.

565. In 1913 the land between the Luguthu and the Morania was advertised for sale and one of the attractions was said to be that it was watered by the Luguthu. Subsequently the gentleman who had taken up one of the farms (L.O. 4634) protested that he had been misled by Government inasmuch as the Luguthu had been diverted away from his farm and no longer watered it.

566. Persistent attempts have been made by Government to satisfy both interests by returning the river to its former course and conducting a supply from another source into the furrow dug by the natives. These efforts have met with very indifferent success until the present year. But the Executive Engineer has now been successful in conducting a good supply of water to the natives' furrow by means of a furrow taken from a tributary of the Kazita River.

567. This furrow has been made at Government expense in other respects, but the Meru have supplied labour free of charge. In respect of the upkeep we understand that it is proposed that the cost should be shared between Government and the Local Native Council.

568. If the question of the furrow is regarded in isolation an equal sharing of the cost would be fair, since it can hardly be claimed that the Meru, by the mere action of digging a furrow, had established a right to divert the Morania River or to receive compensation in the form of an alternative supply of water free of all cost, if the Government should see fit to return the river to its original channel. On the other hand the furrow had been dug at the direction of the District Commissioner, and that may fairly be taken as establishing a right to special consideration.

569. But while a solution on the above lines is equitable if the matter of the water-furrow be considered in isolation, it ceases to be so if considered in conjunction with the question of loss of land. We are not impressed by the claim of the Meru that the land between the two Moranias was theirs in the sense that they made full and continuous use of it. It is probable, however, that they made intermittent use of it for grazing purposes. Therefore, although we cannot admit their claim to the land, we agree that they ought not to be deprived of the use which they had of it without some compensation. We consider that this compensation should be found by Government meeting the full charges of the supply-furrow, both in respect of initial cost and maintenance, the Meru, of course, continuing to be responsible for all charges in connexion with their own furrow.

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570. This claim is illustrated in the plan opposite page 2 of the evidence. While we think that the above solution is equitable, we are informed that the Meru set considerable store on the acquisition of the land now comprised in the farm (L.O. 4634), or rather that part of it which is situated between the two rivers, and it is stated that they would be prepared to make an offer for it. In the special circumstances of the case, we see no reason why such offer should not be considered if the lessee is prepared to entertain it, and if accredited representatives of the European Highlands agree. But the farm forms an integral part of a block which was surveyed in 1913 to be alienated to Europeans, and we find no reason for excluding it from the area which we shall define as "Highlands" under the sixth term of reference.

Claim in
respect of
Isiolo
Government
Station.

571. Isiolo, the administrative headquarters of the Northern Frontier Province, is actually situated in the Meru Native Reserve. The District Commissioner remarks:—

"The Meru Local Council get the rents for trading plots in Isiolo and have no particular objection to Government occupying the land. Ever since the start of Isiolo *boma*, however, there has been a tendency for Somalis to accumulate and reside there with their stock. What is most serious, there has sprung up a large settlement of alien Somalis across the township boundary and within the Meru District. The stock of these and other Somalis, being within the Isiolo Township area, consequently encroach upon the grazing in this district and the Meru are naturally very indignant about this matter, which is bound to lead to serious trouble sooner or later."

572. We entirely agree with the District Commissioner, and are of opinion that these Somalis should be moved from the area in which they now reside. We make recommendations for their disposal in section 815 below.

Meru Native
Forest Reserve
Boundary.

573. We are satisfied, on evidence given to us by Administrative Officers as well as by the Meru themselves, that, when the Native Forest Reserve was demarcated, extensive areas of pastureland were included within the forest boundary. The natives are allowed to use the grazing on obtaining a permit from the Forest Department, but this is not the same thing as free use of the land, and they claim that these grasslands ought not to have been included in the forest at all. We are inclined to sympathize with the Meru in the matter and recommend that the question of the forest boundary be reconsidered. The District Commissioner and the Conservator of Forests believe that a new forest boundary satisfactory to all parties could be found which would have the effect of excluding substantial areas of pastureland from the Forest Reserve.

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574. An area of some 131 acres in the Meru Native Reserve has for several years past been in the occupation of the King's African Rifles. At first it was used to accommodate a detachment of one company, but it has now become the headquarters of the 3rd Battalion and of the Northern Frontier Province Military Mechanical Supply and Transport Corps. It appears that the Meru have never consented to this occupation and are averse from it. They represent:—

The Question of the Removal of the King's African Rifles from Meru.

(1) That the area occupied by the King's African Rifles is situated in the most thickly populated part of the district and is of considerable agricultural and residential value.

(2) That the people of the location concerned have already given land for the United Methodist Church Mission and for the Government station and can ill-afford to lose any more.

(3) That the presence of large numbers of unmarried troops leads to the spread of prostitution and venereal disease amongst the Meru.

575. The District Commissioner adds that the brewing and selling of native intoxicating liquors has proved most difficult to control in the vicinity of the military camp. These reasons possess a certain validity, but would, by themselves, constitute a one-sided presentment of the case. It is beyond question that one of the chief economic needs of the Meru is a local market for their produce, and the presence of so large a body of the King's African Rifles should be of great monetary advantage to them in this respect. The Meru are also able to earn wages as porters for the Supply and Transport Corps.

576. Whether the King's African Rifles remain in Meru District or go elsewhere is a matter which must be settled by military considerations, with which we are not concerned. Our recommendation is that, for so long a time as they remain, they ought to pay rent. The plot should be set apart and leased.

The general procedure governing such leases is a matter with which we deal in the third part of our Report (sections 1525-1541).

577. The Embu natives claim that the present boundary of the Forest Reserve was demarcated without reference to the rights existing under the system of land tenure of the tribes concerned (the Embu, Chuka, Muthambi and Mwimbi) and also in disregard of tribal requirements in the use of salt-licks.

Embu Claim to Part of Mount Kenya Forest.

578. The District Commissioner makes the following comments:—

"It has frequently been stated by responsible persons that, at the time the boundary line was cleared, local natives were informed that the clearing was intended as a road to

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Meru and that they were not informed that access to the forest above the line would be denied to them. The result, it is claimed, is that numerous families have been dispossessed of their best land. Such investigations as I have been able to make of this claim shows that the land was actually owned in the usual native sense) within the present boundary to a varying depth up to about two miles. The actual *ngamba* owners can be traced and the original inter-*githaka* boundaries pointed out."

579. He adds that forest cultivation amongst the natives of his district is considerably less destructive than amongst the Kikuyu, inasmuch as large trees are not cut or destroyed by fire, being regarded as the property of the tribe and consequently not to be touched by individual landowners.

580. We have no evidence that there was any considerable native cultivation above the forest line or that the Embu made use of the land to any extent, and we do not recommend any alteration in the boundary as it would be certain to lead to the destruction of some of the best forest in the Colony.

581. The natives appeared to be more concerned with the question of use of the salt-licks than that of the land, and we recommend that arrangements be made with the Conservator of Forests for them to be granted access to certain of the salt-licks under suitable safeguards.

CHAPTER XVII.

CERTAIN LAND PROBLEMS CONNECTED WITH THE NAIROBI TOWNSHIP AND COMMONAGE.

582. Before proceeding to discuss in detail the adequacy or otherwise of the accommodation for natives in Nairobi, it will be well to offer some observations on the general questions whether the existence of special quarters, where only natives may reside or where natives must reside, is necessary or advisable.

The necessity
of Separate
Areas for
Natives.

583. Having regard to the widely different standards of living observed by natives in Nairobi as compared with other races, we are convinced that considerations of health as well as of social amenities demand separate areas. We are, therefore, satisfied that special residential areas for natives are needed in which they should be required to reside unless exempted. Native domestic servants are generally exempted and reside on the premises of their masters, and a native who owns a shop in the business area would naturally be allowed to live in it, provided that the building conforms with the requirements necessary to qualify it to be used for residential purposes. There are other cases where exemption might be necessary—for instance, the case of night workers, who have to live near their work.

584. It is something of a moot point whether special exemption should be granted to more advanced natives on the grounds that their higher standard of life qualifies them to live in any residential part of Nairobi which they may prefer or can afford. The argument in support of this view is that the native quarter is likely to be a poor quarter and the lay-out plan made by the Municipality is likely to be conceived accordingly, so that it might be difficult for a more well-to-do native to obtain a plot suitable to his requirements. But there is no reason why the native quarter should be conceived as being one and indivisible, and when occasion arises it should be possible to set aside a special area or suburb as a residential quarter for the more advanced natives. In addition to this we consider that it should be possible to grant exemptions to suitable native applicants enabling them to reside outside the native area, if good grounds exist why they should be allowed to do so. We understand from the Municipal Authorities that this is already possible.

585. The present situation in Nairobi is that there are :—

The Present
Situation.

(1) A native location at Pangani, which is to a large extent a spontaneous growth.

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(2) A planned location at Pumwani, for the planning of which the Municipality is responsible.

(3) A Municipal Housing Scheme, in which the Municipality builds and owns the houses and lets rooms to natives.

(4) A Government Housing Scheme and other provisions made by Government and by the Railway for the housing of their African employees.

(5) A reserve at Kibira for Sudanese ex-soldiers of the King's African Rifles.

(1) *Pangani.*

586. When the railway had reached Nairobi and a town began to spring up, natives gradually gravitated to this centre and several collections of native huts appeared. As time went on the smaller settlements were removed and Pangani became the recognized native quarter. It now occupies some thirty acres (the total reservation being 45 acres of which 15 acres are taken by the road reserve).

587. While there is no record that it was ever set aside expressly for this purpose, it has in fact been used as a native quarter ever since. The site has not proved to be particularly suitable and the haphazard way in which the native houses have been built, with very little regard for alignment and still less for sanitation, had already determined Government by 1922 to close the village and move the inhabitants to Pumwani. Various obstacles connected with compensation arose to prevent the project being carried into effect. In December, 1922, the District Commissioner, Nairobi, made comprehensive proposals both for compensation of plot holders and for enabling them, by means of a loan, to build houses in Pumwani.

588. The major details of the scheme are:—

- (a) That compensation on houses should be paid *ad valorem*, the estimated average rate per house being £5, and the total number of houses being 312, making a total estimated outlay of £1,560.
- (b) That the amount involved in this compensation, £1,560, or thereabouts, be advanced from the municipal native brewery fund, and be repaid by Government from the proceeds of the sale of the land to be evacuated at Pangani.
- (c) That any balance from the sale of land at Pangani after repayment of the amount owing to the municipal native brewery fund be credited to a municipal native trust.
- (d) That every householder, besides being compensated in the manner aforesaid for the loss of his house, should receive a loan of an amount sufficient, when added to the amount of compensation paid to him, to make up

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the sum of £35, to be employed by him in building a house at Pumwani on a plot to be assigned by the Municipality.

(Note.—The sum was calculated to be sufficient to enable him to build a four-roomed house of wattle and daub on a suitable plinth, and with a corrugated iron roof.)

- (e) That the loan made to the householder be made from the municipal native brewery fund and bear interest at 4 per cent; that redemption be spread over five years; and that the stand permit fee of Sh. 5 be not charged during this period.
- (f) That any householder who has more than one house should be compensated in respect of all of them, but should only receive assistance by loan for the building of one.
- (g) That any householder who does not wish to build at Pumwani should be at liberty to take his compensation in cash and leave the town.

589. We observe from a perusal of the Government files that the matter has been held over until our Commission has reported, and therefore it appears that recommendations in some detail are required of us. The proposals of the District Commissioner, being expressed in detail, are a suitable starting point for criticism, although it is clear from the files that they do not necessarily represent the views of Government, which still has the project under consideration. We have visited Pangani and Pumwani in company with the Municipal Affairs Officer, the Town Clerk and the Medical Officer of Health, and have taken their evidence and that of other officers, as well as the evidence of the natives concerned. We have also had access to the Secretariat files on the subject and have heard the views of the Commissioner of Lands. Our conclusion is as follows:—

590. The location at Pangani appears to us to be deleterious both to the health and morals of the natives. It is badly overcrowded and has a notable preponderance of undesirables. The sanitary conditions are not such as ought to be permitted in Nairobi and are a menace to the town. No substantial amelioration could be effected without a condemnation of a large proportion of the houses, a course which would inflict more hardship than the general move which is proposed.

591. We regard the District Commissioner's proposals as suitable in some ways, but note the following points:—

(1) We are surprised that the valuation of a house at Pangani should have been set so low as £5, especially as it is estimated that it would cost as much as £35 to build a four-roomed house of

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wattle and daub at Pumwani. These figures appear to need reconsideration. In this connexion the evidence given to us by the Superintendent of the Location is interesting. He stated:—

“You can build a mud and wattle hut with second-hand corrugated iron for Sh. 300 to Sh. 400, but not with a concrete floor, but I should not pass that. To put up a house that I should allow would cost Sh. 800 to Sh. 1,000.”

If these figures are accepted it would seem that the estimate of £5 as suitable compensation for the houses at Pangani is far too low, and that the estimate of £35 as the cost of building a house at Pumwani is also too low. Probably £15 as an average assessment for a house at Pangani would be nearer the mark, but a separate valuation would have to be made in each case.

(2) In the second place we note that nothing has been allowed by way of compensation for disturbance and loss of amenities, points which ought to be taken into account. In the case of lodging house keepers the loss by disturbance will be very considerable, unless they are allowed to keep lodgings in their new quarters. We think, however, that a distinction should be drawn between legitimate lodging houses and those which are used for irregular purposes. In the former case loss of business through disturbance should be taken into account in assessing compensation; in the latter case it should not.

(3) In respect of the land itself there is clearly nothing due, because it is Crown land for which the plot-holders pay rent. We therefore notice with some surprise the proposal contained in (c) above, which is in effect that, if the amount paid in compensation to natives for their houses is less than the proceeds of the sale of the land, the balance should be paid to a municipal native trust. We do not appreciate the reason for this, but think that in the very unlikely contingency of any profit being realized on the transaction Government is entitled to it.

(4) We do not conceive that Government is under any obligation to grant a loan for the purpose of settling all the dispossessed natives in Pumwani, but there is an obligation to find accommodation for them somewhere either in their own reserves or elsewhere. Nor should we wish to deny the claims of some of the long-established residents to very sympathetic consideration, seeing that they were porters and servants of Government in the early days. We recommend the granting of such a loan as is proposed to approved applicants, but there is need for discrimination. It would be clearly unwise to assist undesirables to establish themselves in Pumwani.

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(5) We notice that there has been some debate whether natives who move from Pangani into Pumwani should be allowed to keep lodging houses. We consider that if they are reputable persons and keep respectable lodgings in Pangani, they should be allowed to keep them in Pumwani or alternatively that the compensation given to them should be the greater because of the loss of business which the disturbance will cause.

(6) The closing of Pangani will cause disturbance to lodgers, especially to the undesirables. In most cases they have reserves to which they could be required to go, but for some of them accommodation in the reserves would be difficult. On this problem, which is not confined to Pangani, we shall make comprehensive recommendations below (sections 623, 624 and 1870-1878).

(7) We are inclined to think that the closing of Pangani will not prove to be so cheap or so simple a matter as the District Commissioner's memorandum implies, and if the whole village is moved at one time it seems likely that considerable hardship may result. By far the greater number of the inhabitants are lodgers whose accommodation elsewhere will be a matter of great difficulty, whether they leave the town or remain. We, therefore, recommend that the closing of the village be accomplished by sections.

592. Pumwani Native Location was declared open in January, 1922, and now contains 317 houses all built by the natives themselves, with the exception of ten owned by the Municipality. The natives have plots assigned to them on which to build, and a stand permit fee of Sh. 5 is charged. They are allowed to open shops subject to the possession of a trading licence and the premises being passed as suitable, and the number of such shops at present exceeds fifty. They are not allowed to keep licensed lodging houses, but apparently they are allowed to sub-let rooms. A maternity home, a clinic, public workhouses, a memorial hall and a sports ground, and various other social services and amenities have been provided, including the municipal native brewery, from which most of the funds are found.

(2) *Pumwani
Native
Location.*

593. It is the intention of Government that this area, in conjunction with the land occupied by the municipal housing scheme and Government housing scheme for African employees, should become the principal native quarter of Nairobi. The three areas are all situated at Pumwani and are sufficiently near together to be regarded as one native quarter, although there is intervening land which has been alienated for other purposes. The present area of the native location is 130 acres, of the municipal housing scheme 41 acres and of the Government housing scheme 35 acres. Two additional areas totalling 194 acres have been

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earmarked for extension purposes. There should therefore be no difficulty in accommodating the 293 householders from Pangani or as many of them as choose to go there rather than leave Nairobi, when Pangani Village is closed. We regard the area, together with the extensions, as being sufficient for present and near future requirements, saving the suggestion which we have already made as to the desirability of a special residential quarter for more well-to-do natives.

594. We note that in the plan prepared by the Nairobi Town Planning Authority before it handed over to the Municipality it was contemplated that Pumwani would eventually be extended southwards over the Veterinary Quarantine area as far as the Ngong river or even beyond it, and we understand that this intention still stands. We consider the provisional reservation of this area for future extension to be a prudent step.

(3) *The Municipal Housing Scheme for Natives.*

595. The municipal housing scheme consists of a number of blocks of buildings containing sitting rooms, dormitories and cubicles, while kitchens are provided in which natives may cook their own food. A monthly charge of Sh. 4 is made for a bed, while Sh. 7 is charged for a cubicle containing three beds. At present only about a third of the beds are occupied—a state of affairs said to be due to the present depression.

596. We are advised that the principal use made of this scheme is by the larger firms employing native labour in Nairobi, who find it convenient to hire blocks of rooms for their African employees.

(4) *The Government Housing Scheme for African Employees.*

597. A separate scheme exists for the accommodation of the African employees of Government, which at present is confined to providing houses for interpreters and office boys. It is entirely managed and financed by Government, and the total area of the plot set aside for this purpose is 33 acres. This is not, of course, the whole of the arrangements made by Government for the housing of its employees, and there are many other areas to which no detailed allusion is required—for instance, the military lines, the police lines, the warders' lines and the Railway *landis*.

(5) *The Reserve at Kibira.*

598. The area generally known as Kibira is L.O. 1702, which was surveyed in 1917 as a military reserve and was gazetted as such in 1918. It comprises 4197.9 acres, and is situated south of the Ngong Road, partly inside and partly outside the Nairobi municipal area.

599. It appears that this area was originally assigned to the King's African Rifles in 1904, although not gazetted until many years later. There is nothing in the gazette to show for what reason so large an area was required, but it is common knowledge

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that one of the objects was to provide a home for Sudanese ex-askaris. It cannot be said that these facilities were provided for the Sudanese in lieu of pension, since they received a gratuity on retirement. But no doubt it was felt that there was a moral obligation either to repatriate them or to find them homes in the country, and it was also hoped that the institution of a military cantonment of this kind would form a useful recruiting ground when the sons of these ex-askaris should grow up. Presumably it was thought that the settlement would increase, since their sons in turn would retire and beget families, and therefore so large a reservation was made.

600. But it was certainly not intended that the whole area should be devoted to the military cantonment. The King's African Rifles' lines themselves are inside it, and so are the golf links, and there is nothing whatever to support the contention of the Sudanese that the whole area was given to them as a reserve for ever. They were merely given permission to live there.

601. The legal position of the occupants of Kibira appears to be that they are tenants at will of the Crown, and the tenancy is liable to termination by the Commissioner of Lands at any time. On the other hand we cannot agree that they have no rights in equity. We consider that Government had a clear duty to these ex-askaris either to repatriate them or to find accommodation for them. They were told that they might make their homes at Kibira and in our judgment they ought not to be moved without receiving suitable land elsewhere and compensation for disturbance, and we consider that a similar obligation exists in respect of their widows, or sons who are already householders at Kibira.

602. But figures given to us indicate that out of 571 houses only 251 belong to Sudanese ex-askaris or their dependants. The remainder are said to belong to a heterogeneous miscellany of persons who have penetrated into the settlement from time to time. More than half of these householders are said to be women, of whom the majority are of undesirable character. We would not deny even to these later comers some claim in equity to receive compensation if Kibira is closed, but they are certainly on a different footing from the Sudanese.

603. While we are fully satisfied of the necessity for moving the unauthorized residents of Kibira, we are not convinced of the necessity for moving the Sudanese. Their past services to Government entitle them to sympathetic consideration, and it is certain that they would prefer to stay where they are. We shall presently show grounds for thinking that it would be to the advantage both of themselves and of Government that they should be allowed to do so. But first, since Government clearly has the

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right to move them, if it wishes, upon payment of compensation, and has expressed the intention of doing so, we shall state the terms upon which we consider that it could fairly be done.

(1) There should be payable in respect of every Sudanese household (i.e., the household of a Sudanese ex-askari or of his widow or of his son or sons):—

(a) Compensation in full for the house.

(b) Compensation in the form of equal facilities for cultivation and grazing to be granted in another settlement within easy reach of Nairobi. Provided that the grazing necessary should be computed at four acres in respect of each grown head of cattle owned by the household up to the maximum of twenty-four acres per household.

(c) Compensation for any crops damaged or destroyed and compensation for disturbance estimated at 15 per cent of the value of (a).

Note 1.—The limitation to 24 acres (i.e., provision for six head of cattle) appears to us to be justified, because the purpose for which the settlement was made shows that it was clearly not intended that single households should use it as a ranching proposition, although they would be entitled to keep stock sufficient for their reasonable requirements.

Note 2.—The site should preferably be near enough to Nairobi to allow the population, which has urban proclivities, to have easy access, and far enough away to be safe from early disturbance on account of the expansion of the town.

Note 3.—Since the facilities which the Sudanese enjoy in the present settlement were not given to them and their heirs in perpetuity, but were more in the nature of provision granted for their lifetime, we consider that the new settlement should be on similar terms. We recommend that it should be rent free in the case of each household during the lifetime of the present householders or their widows, but after that a rent should be charged.

Note 4.—If any Sudanese does not wish to go to the new settlement, but prefers to go to Pumwani or elsewhere, he should be allowed to take compensation in cash, to be assessed according to the value of the above facilities.

(2) There should be payable to all householders, other than the Sudanese, the bare cost of their houses and standing crops, and they should be required to take up plots in Pumwani or return to their own reserves. Those of uncertain origin should be sent to the reserves with which they appear to have most affinity or, if they can afford to do so, should take up plots in Pumwani, or lease land in "C" or "D" areas.

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Note.—It may well be argued that these persons have built on Crown land without authority, and deserve no compensation. But some of them have been there for many years and Government has allowed them to remain. Others have followed, observing that Government took no action. The natives, as being a people under tutelage, are entitled to expect that Government will direct and control. Where Government relaxes that control it must, in our opinion, share the responsibility if irregularities occur, and natives cannot be greatly blamed if they take Government's inaction as representing acquiescence.

604. One of the reasons for wishing to abolish the native settlement at Kibira is the desire to be rid of a somewhat disorderly location, and to effect a distribution so that those natives who can justify their presence in the town should go to Pumwani; undesirables should return to their reserves; and the residue of Sudanese should be moved into a garden suburb or village settlement within reach of Nairobi, where they might cultivate in security. The other reason, which has probably had equal weight, is to set free an area for town-planning for residential purposes. While we think that the disposal suggested for the native element to be eminently desirable, we are not convinced that the Sudanese will be as well suited by a settlement at a distance from the town as they are by their present location.

General Comment on the Position at Kibira.

605. The urgent part of the problem is to deal with the natives who have entered the location without authority and are, for the most part, leading disorderly lives. That is urgently required in the interest of general discipline. But in respect of the proposal to move the Sudanese there is perhaps less need for haste. While we have recommended that all existing Sudanese householders have a right to be compensated, we do not think that there is any obligation to allow any further houses to be built. As a recruiting ground for the King's African Rifles the settlement has been practically useless, and we consider that all reasonable obligation is discharged to the Sudanese if the existing houses are allowed to continue. They should not be transferable, but should be destroyed on the death of the householder or his widow or widows. The sons should move into Pumwani or leave the town, and it is recommended that a small *ex gratia* payment be made to enable them to do so.

606. As numbers decrease and the area of the reservation is restricted accordingly, it may become desirable to confine it to a cantonment in one corner of the present area. If for that purpose it becomes necessary to move any house, it could be done on payment of the actual cost of demolition and rebuilding, and such case would naturally form an exception to the provision that no house should be built.

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607. Our reason for suggesting that the Sudanese should remain at Kibira for the present is not only because they are likely to decrease in numbers and could probably be moved at less expense later on. Nor is it solely because they would prefer to be left alone as long as possible. A further and perhaps a better reason is that we have grave doubts of the success of native garden suburbs or village settlements at a distance from Nairobi and consider that the experiment, if made at all, should be made on comprehensive lines after a full study of the issues involved, and such a scheme should certainly not come into being simply as an expedient for moving a few Sudanese from a somewhat valuable residential site.

608. Having regard to the purposes for which the land was originally set aside we consider that it is justifiable to limit by rule the number of live stock which any householder may keep there. A grazing area could then be delimited in accordance with these requirements, and provision should also be made for the demarcation of arable lands. In this way a more orderly arrangement could be secured.

Native Garden
Suburbs or
Village
Settlements.

609. Before making our recommendation on the question of native garden suburbs, it will be well to set out some extracts from the evidence which we have recorded on the subject:—

“I think you have got to have two schemes—your native location in your town and your extramural village within reach of that town. Your town location should really deal with people who have to live or can afford to live in the town. If you have got to deal with the residue of detribalized natives who simply have been deruralized rather than detribalized you may be forced to make some provision for them within reach of a town . . .”

“The extramural village ought to be far enough away from the town not to interfere with the municipal lodging houses, but near enough to allow natives to enjoy certain amenities of a town. The workers mainly should be accommodated in the location. It is the people who have a little bit of produce to sell and who want to enjoy urban amenities, such as football matches and pictures, who might live in the extramural village.”

“No village would be a success unless it was a voluntary one. There are a large number of *safari* boys who work for high wages for possibly three months of the year; they have got to be in reach of a *safari*, but there is no reason why they should spend the remaining nine months in the town—they could live perfectly well 10 to 15 miles out . . .”

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"I would lay the village out and have allotments with a common fence round outside." (*See Evidence*, pp. 1150-1155.)

610. An examination of the above evidence does not hold out much hope of the success of the settlement as an enterprise in market gardening. In the first paragraph the position is taken that Government may be forced to open the settlement in order to provide for deruralized natives, unlikely recruits for work of this kind. The second paragraph shows that the inhabitants would not be workers in the town, but require to be near it because of their predilection for pictures and football matches. The third paragraph shows another use for the village as a place where *safari* porters could live during the nine months of the year while they are unemployed. Apparently the conception which the witness has of the settlement is not so much that it promises much success in an agricultural sense, as that it will accommodate natives who have become too "deruralized" to support life with equanimity in their reserves. On the other hand Colonel Wilkinson, the Officer Commanding the King's African Rifles, states that the typical askari, after completing his tour of service "takes up his native life without the least trouble" (*Evidence*, p. 1157).

611. We now turn to the evidence of Mr. C. H. Adams, District Commissioner, Nairobi.

"Land round big towns is much too valuable to start native farms adjoining them. The demand for small articles of produce, vegetables, potatoes, etc., is more than met by existing supplies and could be vastly increased if sufficient demand arose . . . Natives who want to cultivate or keep stock should remain in their reserves. They cannot claim from Government land elsewhere in the most valuable places merely because they do not like their reserves. Most dertribalized natives in town do not want to cultivate . . . The natives of this country with the exception of Nubians and Swahilis and a few others have good reserves, and there should always be a home under natural and reasonable conditions for them there." (*Evidence*, pp. 1145-1149.)

612. The evidence of Mr. H. A. Carr, the present Municipal Affairs Officer, is similar in effect. In answer to a question whether there is any demand for native quarters on garden city lines, he stated:—

"That is a question that has been discussed for a long time, and many people seem to take it for granted that it is a necessity. Personally I do not think it is at all—quite the

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contrary. It seems to me that if you start allowing these suburbs to spring up you will get the same bad conditions in them as you have in Pangani."

613. The evidence of Dr. A. R. Paterson, Acting Director of Medical and Sanitary Services, appears to be generally favourable to native garden suburbs near towns, but does not go into detail. Attempts have been made to find a suitable area for such a venture somewhere on the Nairobi commonage. A soil survey has been prepared by the Department of Agriculture and is printed with the evidence (p. 1131) and states comprehensively that "the area under survey is decidedly of a second choice when in search of land for arable cultivation." In the analysis of particular areas it shows that there are extensive areas which might be expected to repay deep and skilful cultivation, but, even so, the crops would be liable to suffer severely in time of drought.

Conclusion on
the Evidence.

614. After considering this evidence we have formed the opinion that the establishment of a village garden settlement outside Nairobi is fraught with many difficulties and, unless conceived on broader lines than the present proposal, is foredoomed to failure. The most obvious difficulty with which it is faced is that the land available would only repay cultivation by skilful methods and deep digging, and the population which it is proposed to settle there has been described as not so much detribalized as deruralized. In fact, they are about the last people from whom skilful agriculture and deep digging are to be expected.

615. On the other hand it may be contended there are perhaps elderly married natives who have retired from a useful life of wage-earning in the town, and have now perhaps a son at work in it and wish to live near him. While they are simply idle mouths and solely dependent on their sons' earnings if they remain in the town, they might contrive to grow a few vegetables or keep a few chickens if they have an allotment in a garden settlement, and might at the same time provide a more comfortable home for their son, who could go daily to his work on a bicycle. There may, in fact, be such persons, and it is possible that for a few years the settlement might prove useful in this respect in the same way as garden suburbs are useful adjuncts to towns in European countries.

616. But there is one point of paramount importance which vitiates any attempt to draw a parallel. In a European country a family might find an agricultural allotment in a suburb a convenient means of supplementing wages earned in the town, but when its members cease to have employment in the town it would

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generally be unable to support itself and would go elsewhere, where living is cheaper. Its place would be taken by another family of wage earners.

617. But among Kenya natives at this stage there is no such facility of redistribution. The most genuinely detribalized natives, for whom in particular it is necessary to provide, are the very persons who would find most difficulty in moving elsewhere, and it is probable that in a very few years one would find a village inhabited by pauper natives who have ceased to have any connexion with the town and are seeking to support themselves precariously on second-rate soil in a village of garden allotments without any countryside. One cannot be callous enough to recommend the institution of a garden suburb simply for the sake of providing a convenient *oubliette* for pauper natives and so relieving the town of the responsibility of dealing with them. We agree in principle with the opinion expressed by the District Commissioner, that the native reserves are the proper place for natives whose presence in the town is no longer required.

618. But while this is our general view, there are exceptional cases. There are some natives who have become so detribalized or who have so little affinity with any tribe for which a reserve has been set aside that they could not fairly be required to live in any particular native reserve. There are others perhaps who have a legitimate desire to take up land on lease and develop it as a private farm on more individual lines than would at present be possible in a reserve. Such persons should be allowed to take up land in "C" areas.

619. Such a solution may be thought to be open to the same objections as the village settlement scheme, but the broader basis on which it is conceived gives it more chance of success. Instead of a few score of more or less uniform small holdings surrounding a village, it is a planned lay-out of a countryside to be divided into farms of different sizes, some held individually and some on a species of group or family tenure, the whole idea being to suit the different requirements of persons in different degrees of civilization and to avoid excessive uniformity. A village scheme of small holdings, unless combined with some larger farms or enterprises or supported by an elaborate machinery of co-operation, is apt to produce a dead level of poverty and an excessive uniformity of cultivation, so that when the main crop fails all suffer alike and there are no richer or larger farms which might afford temporary support. But a scheme devised on broader lines would allow for the existence of some larger farms and, so far as possible, preserve an element of tribal control in the larger groups. Urban natives from the towns would only be a small element in the population.

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which in the case of "C" areas nearest to Nairobi would mainly be provided by Kikuyu squatters returned from farms or sections of *mbari* which have not sufficient land for their requirements in the reserve.

A Proposal for
Leasing Land
to be
developed as a
"C" Area
near Nairobi.

620. In order that urban natives might have a better chance to establish themselves, it would be well that one of the "C" areas should be conveniently near to Nairobi. A soil survey of the Nairobi Commonage shows that area to be not very suitable for agricultural settlements except in patches, but there is land in the neighbourhood of the Kiserian and Mbagathi rivers in the Masai Reserve which would be suitable for mixed farming if the Masai are prepared to lease it, and in a later passage, when we are dealing with the Masai Province, we make a proposal to the effect that approximately sixty-nine square miles of this land in the position marked E on the map following section 698 should, if possible, be leased from the Masai for 99 years and be developed analogously to a "C" area (*see* sections 706 and 709 (3) below).

This land is only used nowadays by the Masai of the Athi Plains during times of severe drought and then only for very brief periods. It is well-watered and considerable areas in the valleys could be cultivated. It adjoins the Nairobi commonage and the point at the river junction is about seven miles from the centre of the town. It stretches in a general direction south-west by west to the slopes of the Ngong Hills, and at its western extremity it is about six miles from the nearest point of the Kikuyu Native Reserve. It is, therefore, most conveniently situated to be used as a "C" area. It is near enough to Nairobi to admit of native immigrants from the locations keeping a footing there until they have established themselves, and near enough to the Kikuyu Reserve to admit of Kikuyu natives taking up land there without severing their home connexions. Eventually, no doubt, these two classes of immigrants would form a community and intermarry, and the area would help to bridge the gap between the town and the neighbouring reserves and produce a greater fluidity of distribution. For, while it would be unreasonable to expect the Kikuyu or Masai or any other native reserve to receive alien natives from Nairobi, such as Sudanese and foreign natives and persons of mixed or uncertain origin, the "C" area will tend to fuse the various elements and it will probably not be difficult for a native born in such an area to obtain a footing, at least as a tenant, in either of the neighbouring native reserves, should he desire to do so.

621. Not everybody would welcome such a solution, and penetration of this kind will certainly add to the difficulties of administering the reserves. But, the matter being viewed purely

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as a land problem, it cannot be denied that the rigidity of native reserve boundaries and the absence of anything resembling a free market in land renders problems of distribution very difficult. It cannot permanently be for the good of the country that we should have problems of local congestion in Kikuyu, problems of under-population in Masai, and problems of unemployed, landless, detribalized natives in Nairobi—all of them due to a lack of fluidity in the means of distribution.

622. The sum of our conclusions regarding urban natives in Nairobi is as follows:—

**Summary of
Conclusions
regarding
Urban Natives
in Nairobi.**

- (a) We recommend that Pangani should be moved by sections on the terms which we have suggested, and that approved applicants be admitted into Pumwani.
- (b) We consider that Pumwani should be developed as the main native quarter of Nairobi. The size of the reservation after taking into account the two extensions immediately proposed, is sufficient for present and near future requirements, while we note that further extensions could be effected by taking in parts of the Veterinary Quarantine area, as occasion may arise.
- (c) We recommend that an area be set aside as a residential quarter for more well-to-do natives, but that, in special cases, it should be possible to grant permits to approved native applicants enabling them to live in other residential areas of the town.
- (d) We have made recommendations regarding the compensation which we should consider equitable if it is desired to move the Sudanese settlement at Kibira. But if Government does not consider the move to be an urgent necessity, we recommend that only the unauthorized native immigrants be moved at once, compensation being paid as recommended, but that the Sudanese be allowed to remain on the conditions which we have proposed.
- (e) If the Sudanese are moved, we consider it preferable that they should either move into Pumwani or into a "C" area. If it is found possible to establish a "C" area in the locality which we have recommended between the Kiserian and Mbagathi Rivers by leasing it from the Masai, they might perhaps be given accommodation there, but we record our opinion that a garden allotment suburb conceived in isolation would be foredoomed to failure.
- (f) We agree that the general method of dealing with natives who are not wanted in Nairobi and have no means of

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supporting themselves honestly should be to return them to their reserves. If they prefer to take up land on lease in a "C" area the District Commissioner, Nairobi, should help them to do so, if their reserves are remote. But if their reserves are near (i.e., Kikuyu, Ukamba and Masai) it would probably be more convenient for negotiations to be made through their own District Commissioner.

623. It is perhaps outside the scope of our duties to make recommendations as to the conditions under which it should be lawful to require a native to leave Nairobi. But it is a corollary to the power to move a native from a town that there must be accommodation for him somewhere. It is therefore necessary that, when he is returned to his own reserve, the rules of land tenure in that reserve must not be such as to preclude him from obtaining accommodation at least as a tenant, and receiving a sufficiency of land to cultivate. This applies to the returned squatter from a farm as well as to natives from towns, and it is important that District Commissioners should have the necessary powers, since difficulties in this connexion have already arisen.

624. In respect of natives of uncertain origin, who may be ordered to leave Nairobi as "vagrants" and protest that they have nowhere to go, we consider that the District Commissioner, Nairobi, or such other authority as may be appointed, should have the power to determine, after due inquiry, the tribe and reserve to which such native properly belongs or with which he has most affinity, and that there should be a power to send him to such reserve, and that the District Commissioner of such reserve should be bound to receive him and find accommodation for him.

Nairobi
Commonage.

625. It will be convenient to allude in this place to the problem created by Somali cattle on Nairobi commonage, although, Somalis not being natives of the Colony, it is perhaps not strictly part of the subject matter of this chapter.

626. It appears that about thirty years ago Somali traders were given permission to depasture their cattle on Nairobi commonage. These original Somalis and others who have come later have accumulated more than two thousand head of cattle and are now using the commonage as a ranch.

627. The first effort to place their tenancy on a regular footing seems to have been made in 1929, when they were ordered to pay two shillings a year for a temporary occupation licence on the common and twenty-four shillings a year as rent for a *boma* plot. An area of thirty acres was surveyed, evidently with the intention that these Somali *bomas* or small village settlements should be

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moved to it, but in fact they were not moved and, although they paid the rent, the Somalis have continued to occupy their huts on the common.

628. The temporary occupation licences have been dropped, but the rents continue to be collected, and there are now twenty-three *bomas* which pay.

629. The Somalis do not seem to have entered any protest at the time against the payment of rent, but in 1931 a proposal was made that they should be required to pay a grazing fee of 50 cents for each head of cattle and ten cents for each sheep or goat, and at this point they entered a protest. On 1st March, 1932, they addressed a petition through His Excellency the Governor to the Secretary of State in which it is stated that: "towards the close of Queen Victoria's reign they, at the suggestion of the Provincial Commissioner, left various scattered grazing areas which they occupied in and around Nairobi, and collected at this spot, being informed that it had been given to them as a gift from the Queen."

630. The files to which we have had access reveal nothing to support the contention that there was a gift of any kind. The Somalis have been called in evidence and cannot substantiate it. We are satisfied that in this case, as in so many others which have been brought before us, all that really happened is that permission was granted to occupy a certain area during the pleasure of Government.

631. The files do not reveal for what purpose the Nairobi commonage was originally instituted, but it is reasonable to suppose that it was to provide grazing for trade cattle in transit, for transport oxen and for slaughter oxen. There is nothing to show that it was ever intended, and it is inherently unlikely that it was intended, to be used as a communal farm where either Somalis or any other residents of the township might rear cattle. The Nairobi Commonage is 43 square miles in extent, which is far more than can possibly be required for services proper to the township. Our first recommendation, therefore, is that an area be marked off sufficient to provide accommodation for such of the Somalis who are residing there now as were in the Uganda Rifles (subject to similar restrictions to those which we have recommended for the Sudanese *askaris* at Kibira) and to provide grazing for slaughter oxen, transport oxen and trade cattle in transit, and be handed over to the Municipality to be administered as an integral part of the township, and be made subject to whatever conditions the Municipality sees fit to enforce. The Somalis, in so far as they are cattle traders, can make use of it on the same terms as others in respect of any *bona fide* trade stock in transit.

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632. There then remains the consideration of what is to happen to the rest of the area. Practically the whole of it is gazetted Game Reserve, and the Game Warden is anxious that it should be constituted a National Park, a proposal which appears to have wide support. Although it is not a matter strictly within our terms of reference, we wish to state that such a solution appears to us to be in the best interests of the Colony, and we record our very definite finding that no native rights would be infringed.

633. If, however, the area is not developed as a National Park, and ceases to be Game Reserve, its status would be that of unalienated Crown land in the Highlands, in respect of which Europeans have a privileged position. Facilities for stock-raising in it should not be granted to non-Europeans unless very strong grounds exist. In the present case we cannot see that the Somalis (apart from *askaris* of the Uganda Rifles) have any special claim such as would justify an exception being made. We, therefore, recommend that Somali cattle should not be allowed to graze there. If a Somali wishes to continue trading in cattle he would be free to move into Nairobi and keep his trade stock in transit or slaughter stock in the area specially reserved for that purpose, but he would have to give up ranching. If that course does not appeal to him he can take up land in a "D" area, where no special privilege of race exists, or in a "C" area, since we shall recommend that the definition of the term "native" in respect of such areas be widened to include a Somali, Nubian or a Sudanese. We recommend, however, that the present permissive tenure be extended for one year while arrangements are being made.

634. We understand natives in Pumwani village also make use of Nairobi commonage for grazing purposes. We consider that only very restricted facilities in this direction should be granted. Natives who live in towns cannot expect to keep cattle. But if there is room for a few cows in milk to be kept on the part of the commonage to be taken over by the Municipality, there is no reason why permits should not be granted on payment of a small fee. But strict supervision would be necessary.

PART II

PROVINCES OTHER THAN KIKUYU



CHAPTER I.

THE MASAI PROVINCE: SOME OBSERVATIONS ON THE AGREEMENTS OF 1904 AND 1911 AND THEIR EFFECTS.

635. It is necessary to refer briefly to the early history of the Masai, and to the events which led to the decline of their power. An account of the tribe has been given by several writers of whom the late Sir Charles Eliot was probably one of the best informed. He writes :—

Early History
of the Masai.

“From at least 1850 to the early eighties the Masai were a formidable power in East Africa. They successfully asserted themselves against the Arab slave-traders, took tribute from all who passed through their country, and treated other races, whether African or not, with the greatest arrogance.”

636. The Masai had a highly developed and well-organized military system especially adapted for raiding purposes, and an account of some of the many raids they perpetrated will be found in Mr. Sandford's "Administrative and Political History of the Masai Reserve." It is noteworthy that these raids seldom extended in a westerly direction, where the Lumbwa and Nandi were probably at least a match for them and where even the less warlike Luo seem to have had little difficulty in holding them in check.

Tribal
Organization.

637. The power of the Masai began seriously to decline through various causes, of which the chief was a succession of internal wars. Certain divisions, notably the Uasin Gishu and Laikipiak, were almost annihilated and scattered to the four winds by a combination of other groups, but the victories were of a Pyrrhic character.

Wane of the
Masai Power.

638. About the year 1883, a serious epidemic, which was believed by Joseph Thomson to have been rinderpest but was more probably pleuro-pneumonia, attacked their cattle and resulted in heavy losses. This was followed a few years later, *circa* 1889, by the great cattle plague known as rinderpest, and their vast herds were to a large extent destroyed.

Cattle
Plagues.

639. A year or two later internal warfare recommenced, owing to a feud between Lenana and Sendeyu, the two sons of the powerful Laibon, Mbatian. At first Sendeyu was successful, and certain sections which supported Lenana, notably the Kaputiei and Matapatu, were heavily defeated and were forced to seek refuge with the Kikuyu. Later the Purko, then, as now, the most powerful division of the Masai, threw in their weight on the side of Lenana, defeated Sendeyu in a series of battles, and drove him and his followers in a south-westerly direction. The Loita, Sendeyu's most

Feud between
Lenana and
Sendeyu.

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powerful supporters, suffered heavy losses, and the weaker divisions, the Damat, Laitoyok and Siria, were almost annihilated. Sendeyu and most of the Loita sought refuge across the German border where they got into trouble with the German authorities and eventually returned to British territory. The remnants of the Siria fled to the outskirts of the southern Luo country, where they remained for several years, eventually returning to the area they now occupy in the Trans-Mara region.

Position after
the Masai
Power had
waned.

640. Even after the above series of disasters the Masai were considered by many to be a formidable power, and Sir Charles Eliot stated in the course of a report in June, 1901 :—

“I regard the Masai as the most important and dangerous of the tribes with whom we have to deal in East Africa, and I think it will be long necessary to maintain an adequate military force in the districts which they inhabit.”

In a later report, in April, 1903, he qualified this opinion and wrote :—

“I agree with those who do not think the Masai are a formidable element in East Africa.”

However great a force the Masai were at one time, it is certain that about 1895 their power had seriously waned, and although sporadic raids against the less warlike tribes were not infrequent, the latter were holding their own and in some cases retaliating. In fact, we are inclined to the opinion that, but for British protection, the Masai would have become a factor of comparatively minor importance and their country might have gradually been occupied by other tribes; the feud between Lenana and Sendeyu, after a brief reconciliation, was renewed and, but for Government intervention, they would again have been at each others' throats. About 1895 the numbers of Masai in British territory were little more than 40,000, and with their internal dissensions they certainly could not have maintained their position against a concerted attack by other tribes such as the Lumbwa.

Early days of
European
Settlement.

641. With the advent of settled Government the Masai were enabled to regain a little of their former power and were again accumulating large flocks and herds. They wandered at will over a large part of Kenya, and perpetrated several minor raids. This was the position in 1903, when European settlement had begun.

Masai Grazing
Rights.

642. During 1903 applications were received from Europeans for land in the Rift Valley and elsewhere in places where the Masai grazed their flocks and herds, and the question arose as to how far such applications could be granted without encroaching on the

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Masai grazing rights. Considerable discussion took place, and in September of that year Sir Charles Eliot wrote a memorandum in which he stated :—

“In the discussion on this question two things seem to me to have been confused :—

- (1) The rights of the Masai to *inhabit* particular districts;
- (2) Their right to *monopolize* particular districts, and keep everybody else out.

The first right is undoubted, but the second appears to me most questionable. As a matter of expediency it may sometimes be best to make reserves, but, as a matter of principle, I cannot admit that wandering tribes have a right to keep other and superior races out of large tracts merely because they have acquired the habit of straggling over far more land than they can utilize.”

643. The late Sir Donald Stewart, who succeeded Sir Charles Eliot as Governor, discussed the Masai question immediately after his arrival and came to the conclusion that the removal of the Masai from the Rift Valley into two reserves was the best solution. The northern of the two proposed reserves was Laikipia, and the southern an area of some 4,350 square miles south of the railway in the position shown in the sketch map following Appendix No. 8.

The Agreement
of 1904.

644. The position was explained to the Masai chiefs and representatives at a meeting held at Naivasha on the 9th August, 1904, and on the following day an agreement was signed by the Governor on the one part, and a number of Masai representing the existing clans and sections of the tribe on the other.

645. The text of this agreement, known as the “Masai Agreement of 1904”, will be found in Appendix No. 8.

646. The Masai failed in important particulars to carry out their part of the 1904 Agreement. Sections named in the text of the Agreement as the Elburgo, Gakunuki, Loita, Damat and Laitutok did not move absolutely to Laikipia (the Northern Reserve), but many of them, including the whole of the Loita and Damat sections and a considerable number of the Elburgo (Purko) and Gakunuki (Kakonyuke) remained in the south and scattered throughout what is now the Masai Reserve and far beyond the confines of the Southern Reserve as it was then constituted under the Agreement. It is not known what section of the Masai is meant by the “Laitutok”; there are two divisions known respectively as the Loitokitok (a branch of the Sighirari) and the Laitayok, the former inhabiting an area to the north of Kilimanjaro and the latter living with the Loita in the Loita hills. Neither of these sections moved to Laikipia.

The position
after 1904.

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647. There is no reliable estimate of the numbers of the Masai stock in 1904, but it is certain that they increased very largely both in the north and south between that time and 1911. In 1907, the late Mr. Collyer, then District Commissioner, Rumuruti, estimated the number of cattle in the Northern Reserve at 70,000 and the sheep and goats at 1,710,000.

648. The Northern Reserve had been considerably extended beyond the boundaries as defined in the Agreement, and in the south the Masai had spread all over the country from Mount Kilimanjaro to the Kisii and Kavirondo borders. A few farms had been taken up along the southern Guaso Nyiro River and in the Lemek Valley.

Considerations
which led to
the Agreement
of 1911.

649. When it became clear on the one hand to Government that the Masai were not respecting their new boundaries, and to Lenana, the Paramount Chief, on the other hand, that the separation of the tribe into two areas had caused a greater disunity in the tribal organization than he had anticipated and a weakening of his own authority, proposals for the concentration of the whole tribe in an extended Southern Reserve began to be discussed. While a full and complete statement of the objects and reasons of the proposal would require mention of the fact that the Northern Reserve was to be vacated partly for European settlement, it has also to be stated that the paramount chief of the tribe and the representative chiefs and elders of the Northern Masai agreed to the move for the reason set out in the preamble to the Agreement, namely that they were "satisfied that it is to the best interests of their tribe that the Masai should inhabit one area."

The Agreement
of 1911.

650. On the 4th April, 1911, an Agreement was reached between the Governor (the late Sir Percy Girouard) and the Masai representatives, the text of which will be found in Appendix No. 8. It provided that the Masai should leave the Northern Reserve and be united in one area, the Southern Reserve being extended for this purpose. The area of the extension for which provision was made in the Agreement was approximately 5,850 square miles in the position shown on the map following Appendix No. 8 to which allusion has already been made. Subsequent further extensions are also shown in this map with the dates at which they were made.

The Masai
Move.

651. The move began in June, 1911, and proceeded throughout July and August of that year by four different routes converging on the Mau in the neighbourhood of the "Promised Land." There a hitch occurred owing to numbers of Masai with their stock congregating in that area. There was great congestion and the Masai suffered some losses in cattle. They consequently returned to the European farm areas between Njoro and Elmenteita and for a time the move was suspended. The check had, however, affected the

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views of the Masai and there was an agitation, supported by Legalishu and some of the more influential elders and *moran*, to be allowed to return to Laikipia. The move recommenced in June, 1912, and was completed by the following March.

652. After the decision of Government to continue the move in June, 1912, the agitation to return to Laikipia became more acute, and Mr. A. Morrison, a local lawyer, was approached and took up the case on behalf of the Masai. On the 28th June Mr. Morrison addressed the Colonial Office intimating that he had been instructed by Legalishu to take proceedings against the Government on behalf of the Masai, and an action was brought in May, 1913, against the Attorney General, which was dismissed with costs by the Chief Justice. An appeal to the Court of Appeal for Eastern Africa in December was also dismissed, it being held:—

The "Masai Case."

- (1) The East African Protectorate is in relation to the Crown a foreign country in which the Crown has jurisdiction which is exercisable in accordance with the Foreign Jurisdiction Act, 1900, and Orders-in-Council thereunder.
- (2) The Masai, though living in the Protectorate under the protection of the Crown, were capable of entering into Agreements with the Governor, and such Agreements were in fact Treaties and, as such, claims thereunder are not cognizable in the Protectorate Courts.

653. The boundaries of the Masai Reserve as defined in the Agreement of 1911 were subsequently amended very greatly to the advantage of the Masai.

Further Extensions of the Masai Reserve.

654. The first addition was to the west of the Mara area where some 920 square miles were added in the position shown on the map. The principal reason for this extension was that, when the Northern Masai moved from Laikipia into the extension area of the Southern Reserve which had been provided for their use, they found it already occupied by the Southern Masai who had encroached into it with their flocks and herds, so that the accommodation proved insufficient for them and the extension across the Mara was granted. Reports on this Trans-Mara region submitted by the Director of Agriculture, the Director of Public Works, Mr. J. K. Hill, Manager of the Government Farm, and Mr. C. O'N. Chaplin were to the effect that it consisted of one million acres of the finest grazing land in the Protectorate, exceedingly well-watered and superior to the former Northern Reserve. It was sparsely occupied by the remnants of the Siria section, who are not mentioned in the Agreement.

(1) In the Trans Mara Area.

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655. The Governor, in view of the eminent desirability of including all the Masai in one reserve, felt compelled to recommend that this further area be allotted to the Masai, and it was accordingly included in the boundaries as defined by Proclamation dated the 23rd of July, 1912. The boundaries of the extended area as described in the Proclamation were of a provisional character, and were subsequently slightly modified.

(2) In the
Kilimanjaro
Area.

656. A further addition to the reserve was made later so as to include the Masai of the Laitokitok, who had for many years inhabited the area on the northern slopes of Mount Kilimanjaro in the direction of the Rombo River. These Masai were formerly included in the Seyidie (now Coast) Province and had been administered from Taveta. This extension added 3,730 square miles.

(3) Extensions
in the Mau
Area.

657. Further smaller, but not inconsiderable, additions to the reserve were made on the Mau in view of the special request of the Masai before signing the 1911 Agreement, that as much as possible of the area known as the "Promised Land", for which application had been made by Mr. Powys Cobb, should be given to them. These minor extensions comprised 327 square miles.

Note.—The total of these areas is 15,177 square miles. There have been exclusions amounting to 380 square miles. The balance is, therefore, 14,797 square miles, which is the total area of the Masai Reserve as at present gazetted.

The Kinangop circumcision exchange mentioned in section 696 below, which provided, on balance, a further area of 110 square miles for the Masai, has not been taken into account, since this exchange has not yet been formally completed by gazettment.

Population
and Stock.

658. The present population of the Masai according to the latest official figure is 48,381. The reserve is 14,797 square miles in extent and the density is therefore only about three to the square mile. That is to say that the average Masai household of five persons has an allowance of over one and a half square miles of country to itself. The official estimate of the number of cattle for 1930 is 720,000, but a more recent actual count made by the Veterinary Department in the Kajiado District indicates that the numbers are much in excess of that estimate and are probably more than a million. The number of sheep and goats is given in the 1930 estimate as 820,450 and the number of donkeys as 171,800. The allowance per household of five, based on the official estimate, is therefore 74 cattle, 85 sheep or goats and 18 donkeys, but is in all probability considerably more.

659. The fact that the Masai have been able to accumulate and maintain such vast flocks and herds in their reserve speaks for itself.

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660. It is interesting to compare the conditions in respect of population density with those obtaining in Kikuyu and Kavirondo. While in Masai an area of 14,797 square miles supports a population of 48,381 at a density of about three to the square mile, the three districts of Kikuyu proper comprise 1,726 square miles (as gazetted) supporting a population, which according to the latest official figures numbers 489,156, at a density of 283 to the square mile; and the three Kavirondo native reserves have an area of 7,114 square miles, with a population officially stated to be 1,029,422, and a density of 145 to the square mile; it must be remembered, however, that the Masai are a pastoral tribe, while the Kikuyu and Kavirondo are mainly agricultural.

Comparison with the Population Density in Kikuyu and Kavirondo.

The basis of calculation for the Kikuyu figures given above is as in Note 4 to section 67. •

661. Such great discrepancies cannot be explained simply by the difference in the quality of the land. Although there are certain arid and waterless tracts in the Masai country, as is bound to be the case in so large an area, and parts are fly-infested, the greater part of the reserve includes some of the finest agricultural and pastoral land in Kenya, and the Masai are probably the most wealthy tribe in Africa, both in the matter of land and the stock which they are able to keep on it. The agricultural land compares not unfavourably with that in the neighbouring Kikuyu sub-district of Dagoretti, which is densely inhabited.

Comparison with Kikuyu in respect of the Quality of the Land.

662. The Masai make little or no use of their agricultural land. The Kikuyu are desirous of cultivating it and are in fact cultivating on a small scale on the Ngong hills and other places, but on a very precarious form of tenure.

663. In view of the fact that the Masai were a decaying and decadent race when British administration was established and that the protection given them, in all probability, saved them from disaster, it seems clear that they have been treated in an unduly generous manner as regards land. A comparison of the sparsity in which their reserve is inhabited with the density obtaining among neighbouring tribes shows how notable a degree of maldistribution exists, and, if it is not fair to describe this state of things entirely to the Agreement, it is at least true that the Agreement is the principal obstacle in the way of ameliorating the position. The whole matter is an excellent illustration of the harm which may be done by the locking up and permanent entail of land, and by too great a zeal for security at the expense of fluidity.

Generous Treatment of the Masai.

664. Under our first term of reference we are required to consider the needs of the native population, present and prospective, with respect to land, and the questions of distribution, interpenetration, and fluidity are extremely pertinent. But in respect of all

Effect of the Agreements.

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that part of the Masai Reserve to which the Agreement of 1911 applies, that is to say, the areas marked A and B on the map following Appendix No. 8, the land is declared to be reserved for the exclusive use and benefit of the Masai tribe, and Government has agreed not to convey any land within the boundaries, as defined in the Agreement, by lease or grant to any person without the consent of the paramount chief and the representatives of the tribe, excepting only in the case of land required for public purposes or for mining. From this it is clear that not only Europeans, but even natives of other tribes are precluded from obtaining land in the Masai Reserve on any reasonable security, unless the Masai themselves agree. This they are unlikely to do.

665. A strict insistence on the letter of these clauses would not only be an impediment to leases but would also prevent the considerable amount of peaceful penetration by Kikuyu which is already in progress. Many Masai marry Kikuyu wives who frequently bring members of their family along with them, and the Masai husband, as a relation-in-law, seldom or never objects. In this way an agricultural settlement begins and the Masai tribe gains a reinforcement of which it is greatly in need. But these arrangements might be held to infringe the clause which requires that the land should be used for the *exclusive* use and benefit of the Masai tribe, and it is probable that, if these cases, instead of being settled on a friendly footing between relations-in-law, were to be referred to the chiefs and representatives of the tribe, they would object and the tribe would lose even the few agriculturists which it now possesses together with the force of their example.

666. Again, it may very well be to the advantage of a tribe that land not required for present or near future use should be leased. It is better for land to be used than to lie idle, and the Native Council would receive the rents. The elders of the tribe, having no experience in such matters, may object unreasonably, to the detriment of the tribe, and therefore it may be in the best interests of the tribe that, within defined limits and subject to appropriate safeguards, there should be a power to over-ride such objections in the general interest of the tribe. This is an accepted principle of the Lands Trust Ordinance in respect of other tribes. If it is a right principle, as we are convinced that it is, it can only be to the disadvantage of the Masai to be excluded from its operation.

667. From these considerations we are satisfied that too rigid an adherence to the terms of the Agreement is not in the best interests of the Masai.

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668. When we turn from the interests of the Masai and consider the interests of other tribes, it is clear that the permanent entail of a vast area of land for the benefit of a tribe which makes very little use of it and, left to itself, would certainly not be able to keep it, must appear unjust; especially when one, at least, of the neighbouring tribes is living in a state which borders on congestion. Nobody wishes to deprive the Masai of their land, but justification might arise for requiring them to lease unused portions of it to other tribes, or to individual natives.

669. Besides the leasing of land which they do not require, there are several advantageous exchanges which the Masai might arrange with great profit to themselves and to the Colony at large, and we shall refer to some of them in sections 693-711 below.

670. It may perhaps be arguable that the Kenya Annexation Order-in-Council dated 11th June, 1920, had the effect of rendering the Masai Agreement null and void. But we are not so much concerned with the position in law as with the position in equity, and we are fully persuaded that the Masai are in equity entitled to all the benefits of the Agreement just as if it were still in force. But that does not mean that the Agreement cannot be amended by the elimination or modification of clauses which are not in reality beneficial to the Masai.

Effect of the
Kenya
Annexation
Order-in-
Council.

671. We hold that our obligation towards the Masai is exactly the same as it is towards all the other tribes of Kenya, namely, to propose such amendments of the Lands Trust Ordinance and such safeguards as will ensure that all the native reserves are used and developed to the best advantage of the occupant tribes, subject only to the acquisition of land for public purposes or purposes essential to the welfare of the Colony. In so far as we are successful in doing so, we consider that the special clauses now relating to leases or licences in the Masai Reserve should be discontinued. There is something invidious and a trifle absurd in the position that a particular method of lease or licence should be considered just and equitable for other tribes, but not for the Masai. Our duty is to devise a method which is just to all of them, and we shall address ourselves to that task in the third part of our Report (Part III, Chapter III, *passim*).

672. The Masai can only stand to gain by the elimination of safeguards which are of no practical use or value to them and can only hinder their progress. If they remain in isolation in their reserve, as they will have to do if it is to be developed for their *exclusive* use and benefit, they are likely to stagnate and further degenerate, and large areas of valuable agricultural land, either entirely unused on account of fly or East Coast Fever or used only

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for depasturing uneconomic live stock will remain empty and undeveloped. We have had reliable evidence that the fly areas are rapidly extending, and that the Masai by themselves cannot hope to deal with this problem, but an industrial agricultural tribe such as the Kikuyu would quickly clear the bush harbouring the fly and replace it by cultivation.

673. It is important that, if these recommendations are accepted by Government and if they are held, in however slight a degree, to affect the privileges which the Masai now enjoy under the Agreement of 1911, they should be apprised of the change and of the reasons for it.

674. We have been moved to write this chapter by the necessity of calling attention to the maldistribution of native population, which would certainly be ameliorated if a less exclusive policy were adopted in the Masai Reserve; the only point to which we have directed our attention is the necessity for securing a better distribution of the native population and a more economic use of the land.

CHAPTER II.

THE MASAI PROVINCE: CERTAIN SPECIFIC LAND PROBLEMS CONNECTED WITH THE MASAI TRIBE.

675. We now turn to an examination of certain specific claims which have a certain local importance but are, by comparison with the more comprehensive considerations which we have just been discussing, entirely of a minor character.

Certain
Specific
Claims.

676. The Masai claim the area one mile in width on the south side of the railway line from Athi River Township to Sultan Hamud Station, and the triangle between Chyulu, the Kiboko River and Sultan Hamud. These areas are known as the Mile Zone and the Chyulu Triangle and it is convenient to discuss them both together.

Claims to Mile-
Zone and
Chyulu
Triangle.

677. Two facts emerge clearly from our examination of the evidence: the land claimed is not included in the Agreement boundaries of 1911 or in any other agreement with the Masai; and the Masai know that it was not included. We have therefore concluded that the Masai cannot claim it as of right.

678. When the Agreement was signed, it was certified that the document was explained to the chiefs and representatives of the Masai, who entered into the Agreement of their own free will and with full knowledge of its contents. This certificate was signed by the Crown Advocate, the Secretary for Native Affairs, four Provincial Commissioners and the Treasurer of the Protectorate.

679. Evidence was given to the sub-committee of Executive Council, which went into the matter, by Mr. R. W. Hemsted, Officer in Charge of the Masai for many years, to the effect that, although in the absence of demarcation, neither he nor the Masai knew precisely where the boundary was, they knew quite well and had been told many times that it did not extend up to the railway line. We have also had evidence (p. 1262) to the effect that Major E. D. Browne, when District Commissioner, Ngong, began to erect beacons to demarcate the Mile Zone.

See also
p. 1262

680. It has been represented to us in some quarters that the Masai have a good claim to the area on economic grounds. It contains sources of water supply of considerable value to them, of which they have had the unimpeded use for a number of years. It will entail some hardship on the tribe if it is deprived of the use of these areas, pending the provision of an adequate alternative supply, and we recommend the adoption of one of the following courses

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which follow in the main the recommendations of the Lands Trust Board and of Executive Council, both of which bodies made careful inquiries into the position.

681. Firstly, if the Masai so desire, they should be given an opportunity of taking out annual leases at a reasonable rent, such leases to be renewable until such time as equivalent watering facilities be made available in the adjoining parts of the Masai Reserve either by boring or otherwise.

682. Secondly, there are within the confines of the Masai Reserve considerable areas of excellent agricultural land, which remain largely unused owing to the prevalence of fly and East Coast fever and the conservative adherence of the Masai to a strictly pastoral mode of life. Without doubt, this land would be of great value to other tribes or communities who may require scope for expansion or agricultural development. We consider that it would be of advantage to the Masai, should they be willing, to cede some of this land in exchange for the Chyulu Triangle, or any other area which they may desire and which may be available. Such exchanges, could they be arranged, would be of undoubted value, not only to the Masai as a tribe, but also to the Colony as a whole. But the result of preliminary inquiries made by the officers administering the tribe does not encourage us to believe that the Masai are at present willing to entertain any such suggestion.

Masai Claim
to Quarter
Mile Zone.

683. Under the boundary gazettment of 1926, the Magadi Railway, together with all land extending a quarter of a mile from the centre line thereof on both sides, was excluded from the Masai Reserve.

684. This area was included in the Agreement boundaries, and its re-inclusion in the reserve was approved by His Excellency the Governor in Council in 1930, and merely awaits provision of the necessary legal machinery. We recommend that the area be gazetted as native reserve. The area involved is approximately 38 square miles.

Masai Rights
over Certain
Farms near
Ngong.

685. One of the clauses of the 1904 Agreement reads as follows :—

“In addition to the foregoing, Lenana as Chief Laibon and his successors to be allowed to occupy the land lying in between the Mbagathi and Kisserian Streams, from Donyo Lamuyu to the point where the streams meet, with the exception of land already occupied by Mr. Oulton, Mr. McQueen and Mr. Paterson.”

Actually there were six farms partly contained in the block south of the Mbagathi River, and the problem which has to be settled is what is the status of the other three.

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686. Under the 1911 Agreement, the Northern Masai agreed to move to the land "bounded on the east by the Southern Masai Native Reserve as defined in the Proclamation dated 18th June, 1906, and published in the *Official Gazette* of 1st July, 1906."

687. The description in this notice runs, in part, as follows :—

"On the north this reserve is bounded by the Mbagathi Stream and by the Athi River . . . thence in a north-easterly direction to the peak of Donyo Nyuki (Suswa); thence in a southern direction to the point where the Mbagathi River rises."

688. By a further clause in the 1911 Agreement the Governor agreed :—

"to reserve for the exclusive use of the Masai tribe the area on the south side of the Uganda Railway as defined above, and as shown on the attached map, which area is coadunated with the Southern Masai Native Reserve . . ."

It is therefore quite clear that the Southern Masai Reserve as defined in the 1906 Gazette notice is secured to the Masai by the 1911 Agreement.

689. Two points are thus proved conclusively although they have not been raised by the Masai :—

- (1) The land between the Mbagathi and Kisserian streams is Masai Reserve secured by the Agreement with the exception of the land owned in 1904 by the three landlords named above.
- (2) That the Laibon Lenana and his successors have rights of occupation in this area.

690. It was clearly the intention of Government, with which the Masai agreed, that all alienated farms south of the Mbagathi River should be excluded from the Masai Reserve, and it was simply by an oversight that three of the farms were excluded and the other three, or parts of them, were not.

691. So far as can be ascertained, parts of the following farms must be considered as being within the Masai Reserve :—

- (1) Farm No. 193 : 643 acres, freehold.
- (2) Farm No. 196 : 540 acres, freehold.
- (3) Farm No. 197 : 106 acres, freehold.

692. In our discussion of the claim by the Masai to the Mile Zone and Chyulu Triangle, we adhered to the strict letter of the Agreements and it is only just that we should adhere to it equally in the case of these farms, which, as we have seen, are part of the

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area of which the Masai have, by Agreement, been granted exclusive use, although they themselves are apparently unaware of the fact. We recommend that the Local Native Council should receive the amount which was paid to the Government for the purchase of the land; the question as to whether the Laibon is entitled to share in it could then be investigated.

The Mau
Forest
Exchange
Proposal.

693. The proposal known as the Mau Forest Exchange, of which full details will be found in the Secretary's Précis, emanated from the Conservator of Forests, whose suggestion was that the Masai should give up an area of forest to the Forest Department in exchange for an area of grazing on the southern extremity of the Eastern Mau Forest Reserve. He represented that the grazing would be of benefit to the Masai, while the forest land would be of value to his department. But the areas of grassland were not sufficient to compensate for the loss of the forest, and the Conservator of Forests favoured a suggestion by Powysland, Limited, that they should give up an adjacent area of grassland to be thrown into the exchange, receiving in return some unalienated Crown land adjacent to their Keringet Estate.

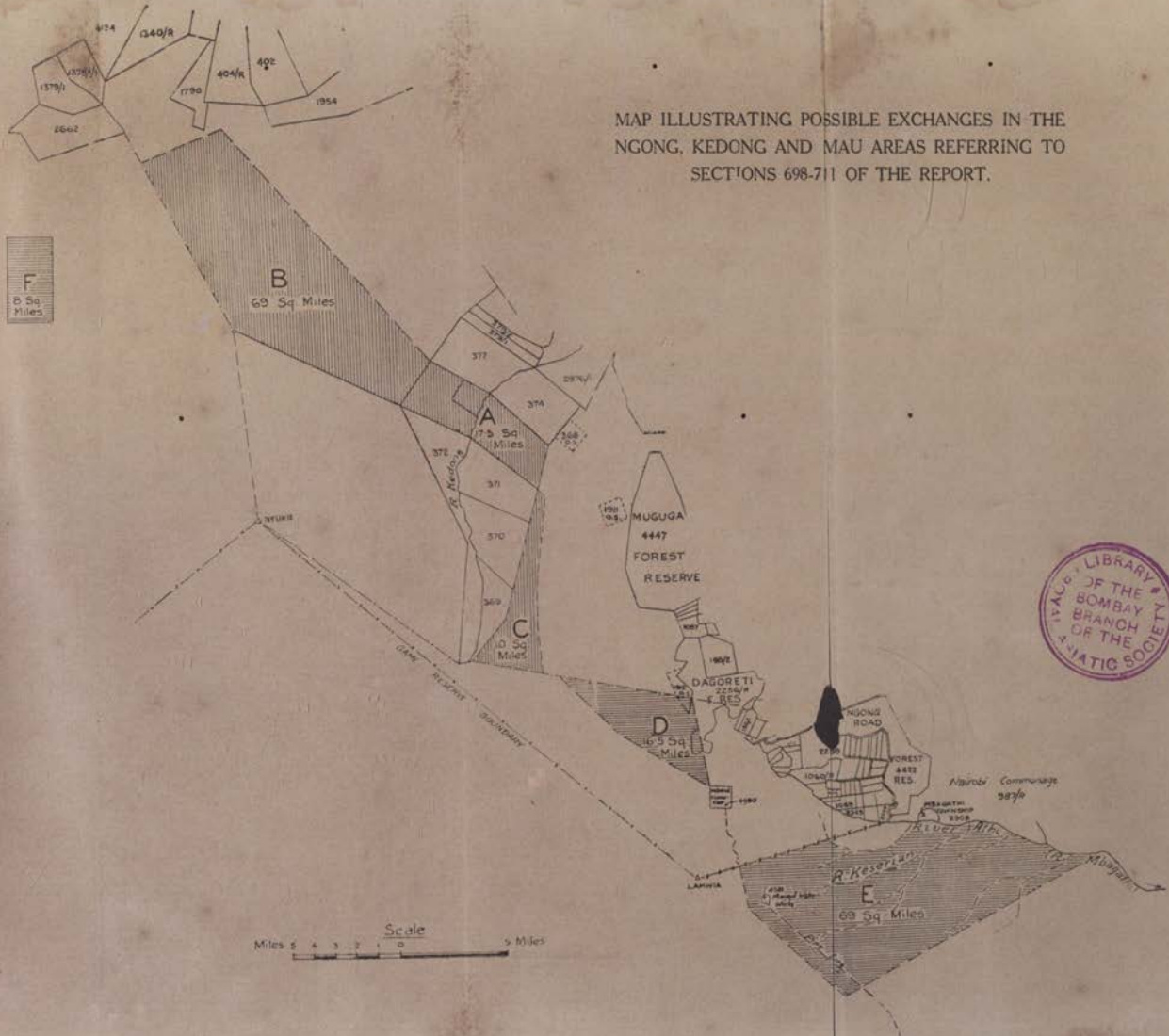
694. This subsidiary exchange has now been effected so that the proposal is now that the Masai should receive an area of 12,852 acres of Forest Reserve and unalienated Crown land, which is valuable grazing land, in exchange for approximately 13,245 acres of forest, which is valueless to the Masai. The Chief Native Commissioner, the Commissioner for Local Government, Lands and Settlement, the Conservator of Forests, the Provincial Commissioner, Masai, and the Provincial Commissioner, Rift Valley, have expressed concurrence. The Masai have agreed, provided that a small tongue of forest land of about 1,200 acres, lying between two areas of grassland, can be thrown into the exchange.

695. After consultation with the Conservator of Forests, we recommend that this tongue of land be included and the exchange implemented, making the total which the Masai will receive 14,052 acres. The tongue, which contains valuable cedar, should be preserved as Native Reserve Forest Reserve, and a road of access for stock should be provided.

The Kinangop
Circumcision
Area
Exchange.

696. Land had been reserved in the Kinangop under the 1904 Agreement, in order that the Masai might perform certain customary circumcision ceremonies in that area. As this area, comprising approximately ten square miles, was isolated and a considerable distance from the reserve, it was proposed that the Masai should be given land in the Kedong Valley, amounting to 118 square miles, in exchange therefor. The Masai Local Native Council expressed full agreement with the proposal and the exchange is in active operation at present, with the general consent of all parties. We recommend that it be regularised.

MAP ILLUSTRATING POSSIBLE EXCHANGES IN THE
NGONG, KEDONG AND MAU AREAS REFERRING TO
SECTIONS 698-711 OF THE REPORT.



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697. The proposal known as the "Colville Exchange" is that the Masai should give up a portion of the angle between Farm 1382/2 and 410/1 at Naivasha for an equivalent area of Farm 401/1. Both Mr. Colville and the local Masai residents have asked for this exchange, to give the Masai more convenient access to the River Marmonet, which flows along the boundary of Farm 1382/2. We agree with the proposal and recommend that it be implemented. The areas to be given and taken are believed to be about 230 acres on each side.

Farm 410/1,
the "Colville
Exchange."

698. The map here following shows three areas A, B and C, shaded with vertical lines, and three areas D, E and F, shaded with horizontal lines. The former show land which the Masai would be glad to have, and the latter show land which they might possibly be prepared to give up in exchange. The descriptions are as follows:—

Possibility of
Exchanges or
Leases in the
Ngong,
Kedong and
Mau Areas.

699. Area A consists of two farms (Nos. 373 and 375) abutting on the Masai boundary and comprising about $12\frac{1}{2}$ square miles and including a mile stretch of the Kedong River. These two farms, though alienated, have been unoccupied for several years. There can be little doubt that it is difficult for a European to make a living on such land as this. The Masai, in order to get an extra mile of the river, recently offered to purchase these two farms, but a price satisfactory to both parties could not be reached and negotiations were dropped.

700. Area B is a part of the unalienated Crown land adjoining these farms and abutting on the northern boundary of the Masai Reserve, which the Masai would find useful for grazing purposes, but which is of little use to the European area in which it is geographically situated. As shown on the map it is about 69 square miles.

701. Area C is about 10 square miles in extent and is situated at the south-west corner of Ndeiya in the Kikuyu Native Reserve. The Masai already have the use of it as a result of a temporary exchange with the Kikuyu, as explained in section 448 above.

702. The total of these areas, which it is suggested the Masai would be glad to acquire, is approximately $91\frac{1}{2}$ square miles.

703. It has been suggested that they might be prepared to give up in exchange the areas D, E and F.

704. Areas D and E were vacated some twenty years ago by the Masai on account of the prevalence of East Coast Fever, and to-day carry only a sparse population composed for the most part of detribalized Masai, who have in many cases married Kikuyu women and also of a certain number of pure Kikuyu. The land between D and E although of the same general character, has not been included in the proposed exchange because the Masai are in more effective occupation and the population is expected to increase.

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705. Area D is about $16\frac{1}{2}$ square miles and is contiguous to the Kikuyu Reserve. Part of it is already on lease to the Kikuyu in return for Area C; of the total area about six square miles are first class grazing and fair agricultural land; its value is stated to be about half that of first class agricultural land in the neighbouring Kikuyu Reserve. The remaining $10\frac{1}{2}$ square miles are good grazing land but of small agricultural value, and its general value is perhaps not more than one-eighth of first class agricultural land. No point in this area is more than six miles from permanent water and the formation of the soil is favourable to dam construction.

706. Area E has also been vacated by the Masai. It lies south of the Mbagathi River between Mbagathi Township Reserve and a point a little to the east of the Kapio River. As shown on the map it is 69 square miles. It is well watered.

707. Area F, about eight square miles, is a stretch of fertile agricultural land on the slopes of the Mau near the source of the Weiwei River. This land was for some years occupied by Kikuyu tenants of the Kakonyuke Masai who were cultivating about 1,200 acres of first class agricultural land and raising large crops of maize and potatoes. Though normally engaged as wage labourers to cultivate for the Masai, these tenants were in actual fact paying rent for the right to occupy. The area which is covered with forest and bush is not occupied by the Masai, whose use of it is restricted to a cattle track leading from their grazing grounds on the lower slopes of the Mau, to the head-waters of the Weiwei River. The previous Kikuyu tenants were evicted about three years ago for administrative reasons.

708. The total of these three areas (D, E and F), as estimated, is about 93 square miles, and the total of the areas for which it has been suggested that the Masai would be prepared to exchange them is 91 square miles. If there is a difference in value on either side, it should be capable of adjustment, and if there is a balance in favour of the Masai it could perhaps be made good to them by throwing part of the Chyulu Triangle into the exchange.

709. Nevertheless, we think it unlikely that the Masai would agree to a full exchange, and in view of the difficulties involved, we recommend that a settlement be attempted on the following lines:—

(1) That the area C should be leased by the Kikuyu to the Masai for 99 years, and that the area D should be leased by the Masai to the Kikuyu for 99 years, rent being assessed in each case on a fair economic basis.

Note. If both tribes prefer it, the present friendly arrangement could be continued without the necessity of a formal lease, but the principal objection to this, in our eyes, is that the Kikuyu

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are getting more and better land than they are giving up, and sooner or later the position must be regularised.

(2) That the areas E and F be set apart for leasing to natives on terms which would include clauses for conservation and development, area F being especially suitable for agricultural leases; the rents to be payable to the Masai Local Native Council.

(3) That when the areas have been so set apart, area E should be leased as a whole to Government which should then administer it in the same way as is recommended for "Native leasehold areas" as described in Part III of the Report; but the area F should be leased piecemeal in the manner in which the Provincial Commissioner, after consultation with the Masai Local Land Board, shall decide, subject to various safeguards recommended in Part III (sections 1526 and 1541 below).

(4) That, if the Masai agree to the foregoing recommendations and they are carried out, then Government should take steps to acquire area A from the present lessees, and should then grant to the Masai a lease of areas A and B for a period of 99 years; provided that, in view of the fact that these areas are in the European Highlands, these arrangements should not be put in train, until an opportunity has been afforded to accredited representatives of the European Highlands to enter objections (as provided in section 1496).

Note.—We do not wish this recommendation to be read in the sense that the Masai have anything in the nature of an option or prior claim.

710. The above recommendations are, to some extent, inter-dependent, and are based on the assumption that the Masai will agree. If, on the other hand, the Masai do not agree, a position will arise demanding consideration by Government. The first of the foregoing proposals would come under the head of an inter-tribal lease, for which we recommend a procedure in section 1486 of Part III. The second would involve setting apart and leasing, matters which we cover in sections 1526, 1531 and 1541. It will be observed that in the first case, the final voice is with the Secretary of State, while in the latter the Lands Trust Board has a veto against which there is no recourse, except when the purpose for which the land is required is held to be a public purpose, in which case the Land Acquisition Act may be applied. For the reasons stated in the previous chapter (sections 664 to 671 above) we have not thought it necessary to provide an exceptional procedure in the case of the Masai tribe.

711. We are strongly of the opinion that every step should be taken to promote exchange and other accommodations which are

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calculated to bring vacant or sparsely occupied land in the Masai Reserve into effective use. Mr. S. F. Deck, Provincial Commissioner, has put the position, with great clearness, in the following passage which we quote from his evidence. (Evidence, p. 1264.)

“It cannot be to the advantage of the community in general that vacant lands reserved for specified tribes should be left unpopulated when adjoining reserves are seriously overcrowded. It is probable that the Masai will vacate additional areas in the near future between the Kisserian River and Kajiado; and it is advisable that Government should visualize this position and take powers to deal with it.”

“I cannot see how Government without the power of compulsory acquisition can possibly ensure that land, the greatest asset the country possesses, is utilized to the best advantage.”

“The principle of reserving certain areas for certain tribes for native occupation is unassailable. But the grant of large areas in perpetual freehold to a community which may never be in a position to utilize beneficially the land so granted, is, to my mind, definitely contrary to the interests of native communities in general.”

We do not think that there is any occasion for recommending compulsory acquisition, but we do recommend that land which the Masai do not require and which other communities are prepared to develop should, when a clear need arises, be set apart and leased.

Other possible
Leases or
Accommoda-
tions.

712. Other possible areas which the Masai might arrange to lease or exchange for a sufficient consideration are the fly areas in the Trans-Mara and on the Tsavo River; also the lower reaches of the Mara River and the lower reaches of the Southern Uaso Nyiro. Only the last two of these areas are in the Agreement boundary, the other two being in parts of the reserve which have been added subsequently. The Crown land south of the Rombo River is much coveted by the Masai for grazing purposes, and it is likely that they would be prepared to cede substantial areas of fly-infested, but good arable land instead of it. One such area lies in the south-eastern corner of the reserve on the upper waters of the Tsavo River, the use of which certain Kamba have endeavoured to obtain.

Possible Lease
of certain
land to the
Lumbwa.

713. In the north-west corner of the Masai Reserve there is an area of dense forest, which protects the head-waters of the Mara and Kipsonoi Rivers. This forest, of nearly 200 square miles, is probably more than is required for this purpose, and a considerable acreage of good agricultural land, of which the Masai are unable to make any use, could profitably be set aside and leased to others who are prepared to make use of it.

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714. A further point which has to be considered in connexion with the Masai claims of right is that a considerable part of their reserve was a gazetted Game Reserve at the time of the 1904 Agreement and still remains so. The Game Reserve.

715. It is evident that the presence of large herds of game diminishes the available pasture and might be prejudicial to the development of the Masai Reserve as an efficiently managed pastoral country, which we hope it will ultimately become.

716. The game would not only consume much of the available grazing, but would also break down fences, and any steps which might be taken towards the eradication of ticks would be nullified.

717. But, with matters as they are, and are likely to remain in the near future, the abolition of the Game Reserve at the present time would in our opinion be of no advantage to the Masai and might even be detrimental to them.

718. If the abolition of the Game Reserve were decided upon it is probable that Europeans would concentrate mainly on lion hunting, with the result that the number of herbivorous game might be increased rather than diminished. If, however, the Masai in future show a disposition towards improved pastoral or agricultural methods, any obstacles which the existence of a Game Reserve presented should not be allowed to stand in the way of useful development and the Game Reserve should be limited or abolished as circumstances dictate. Moreover, we feel that if our recommendations for the compulsory reduction of Masai stock are put into force, assistance should be given to the Masai in reducing the number of game in their reserve.

CHAPTER III.

THE KAMBA TRIBE; A SHORT ECONOMIC SURVEY.

A Short
Description of
the Economic
Position of
the Kamba.

719. Since the claims of the Kamba rest partly on an economic and partly on a historical basis, it will be well to give a short account of the general conditions obtaining among the tribe before proceeding to an examination of particular claims.

The Density
of Population.

720. The Kamba Province consists of two districts, Machakos and Kitui, and the following table shows the area, population, and density of the two reserves.

<i>Reserve.</i>	<i>Area in Square Miles.</i>		<i>Population.</i>	<i>Density per Square Mile.</i>	
Machakos ...	...	2,166	...	238,910	...
Kitui ...	...	5,911	...	152,759	...
Province ...	...	8,077	...	391,669	...
					48

Note 1.—The figures given for area are the Surveyor General's official figures for 1932, and the figures for population are the Chief Native Commissioner's official figures for 1932.

Note 2.—Of the total population of the Machakos District, 10,165 are stated to be resident on European farms in the district as squatters. If allowance is made for this fact, the density in the reserve is reduced to 106 to the square mile. It is also estimated that at least 2,000 Machakos Kamba and 6,000 Kitui Kamba are resident outside the Province, partly in Nyeri, Fort Hall and Embu Districts and partly as squatters on alienated farms in the Thika sub-district; these are not included in the census figures given above.

721. These figures of population density are subject to the very important qualification that, for topographical reasons, the distribution of the population is far from uniform. Especially is this the case in the Kitui Reserve, where large areas are not inhabited during the dry season owing to lack of water.

The Rate of
Increase of the
Population.

722. From figures supplied by the District Officers, it appears a safe inference that the Kamba are rapidly increasing in number, a fact which we shall bear in mind when we come to a consideration of the various proposals emanating from the province.

The Position
in regard to
Agriculture
and Live
Stock.

723. We shall now review briefly the present position in the reserves with regard to agriculture proper and with regard to live stock. As conditions in the two districts vary considerably, it is convenient to discuss them separately

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724. It should be mentioned at this juncture that the Kamba are at present partly a pastoral tribe, and partly agricultural. As no officer of the Department of Agriculture has been stationed in the province of recent years, until about a year ago, no figures or details of production are available, and a general note on the condition of agriculture in each district, embodying such information as is supplied by the evidence and memoranda before us, is all that can be attempted.

725. Tests have been made in the Machakos District from which it has been estimated that the average areas cultivated are as follows :—

	<i>Cultivated per man and wife.</i>	<i>Cultivated per old native women.</i>
More productive areas ...	1½ acres	¾ acre
More barren areas ...	2¼–2½ acres	1½ acres

These figures refer only to cultivation by hand. The ox-plough is now being brought into use in considerable numbers in certain locations, and it is estimated that plough-owners till an area of about four acres each. It has been calculated on this basis that the total area of the reserve under actual cultivation amounts to approximately 140,000 acres, with an additional 70,000 acres lying fallow.

726. Thus, in respect of each family of five, the average area under cultivation is approximately three acres, while one and a half acres lie fallow. Without doubt there is considerably more cultivation in the Machakos District than is generally realized, and, furthermore, it appears to be of a comparatively high standard.

727. The evidence before us shows that it is generally considered by those who are in the best position to know, that the area of the present Native Reserve is sufficient for the agricultural requirements of the people at the moment and in the immediate future; but it has been urged by the Provincial Commissioner that the more distant future needs of the district in this connexion require careful consideration. We realize that there must be considerable areas of arable land, which, owing to the hilly nature of the country, do not lend themselves readily to cultivation by plough but which are well adapted to the ordinary hand hoe, but there is little doubt that large areas can be tilled by ox-ploughs.

728. It may be argued that as the area of the reserve is 1,386,240 acres and the estimated area under cultivation and fallow is but 210,000 acres, there is great opportunity for agricultural expansion. This argument has considerable force and we agree with it generally, but qualification is necessary.

Agriculture in
Machakos
District.

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729. In many places the nature of the soil does not lend itself to effective agricultural use under present native methods of cultivation, but with an increased knowledge of the principles of dry farming it will be possible to develop considerable areas hitherto deemed uncultivable. Improved methods of cultivation also should enable higher yields to be produced from areas now tilled.

730. Another item which must be taken into account in visualizing future agricultural development in the Machakos district is that a large area amounting to two or three hundred thousand acres is at present uninhabited owing to tsetse fly; it is likely that this area may possess considerable agricultural potentialities, if the land is cleared of fly and if suitable methods of dry farming are applied. But in many parts there are steep hillsides, which may be suitable for planting timber, but do not permit of cultivation.

731. Further, there has been a very considerable amount of erosion due to overstocking, reckless cutting of timber, and other causes, though we are glad to learn that public opinion is not only becoming opposed to wanton destruction of timber, but that the natives are planting up considerable areas. For this, both they and the officers concerned deserve credit. Our general impression on our tour through the district was that erosion, though serious, was scarcely so great as is commonly believed. Reconditioning schemes should prove both practicable and profitable in the locations which are at present eroded.

Agriculture in
Kitui District.

732. No statistics relating to agricultural production in the Kitui District are available. The District Commissioner remarks that in point of area there is adequate land for future agricultural development, but the difficulty is largely one of water supply. More and better water facilities are necessary.

Stock owned
by Machakos
Kamba.

733. We shall now turn to consideration of the Kamba as stockowners, and our analysis will show that the problem is serious. The overstocking of the Machakos Native Reserve in particular has been common knowledge throughout the Colony for some time past, and we feel that it is desirable that a full statement of the facts should be made.

734. It has been estimated that the stock owned by the Kamba in the Machakos District, including those on farms, amounts to 248,805 head of cattle and 310,388 sheep and goats. In addition there are some 20,000 cattle owned by squatters on farms outside the district (evidence of the Provincial Commissioner, Mr. T. D. Butler, p. 1319). We shall examine these figures from two points of view, first, as to whether the number of stock is proportionate to the needs of the people, and secondly, as to whether the available grazing land is sufficient to carry the stock.

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735. The average number of stock owned by a family of five is approximately five head of cattle and six and a half sheep and goats. It is thus apparent that if, as we think we may fairly do, we accept six head of cattle as a reasonable quota for a family in a semi-agricultural tribe like the Kamba, then the people might well have more stock without the number owned by the average family being unduly high. It is therefore erroneous to assume that the Machakos Kamba are an exceedingly wealthy tribe as regards cattle; the Suk and the Masai are very much better off in this respect, but these latter are, of course, almost entirely pastoral.

736. It should be noted that in addition to their cattle, the Kamba possess considerable numbers of sheep and goats. At present, however, these sheep and goats can only be considered in terms of meat and not of milk, because the practice of drinking goat's milk is uncommon.

737. It cannot be questioned that a large proportion of the Kamba cattle are of an uneconomic character. There are many useless bulls and barren cows which are merely parasites and could well be slaughtered, and the grazing, thereby rendered available, used to support milch cows and their calves. An improvement in the quality of the stock, even if accompanied by a diminution in the quantity, would render more milk available and improve the diet and consequently the physique of the people.

The Type of
Cattle in
Machakos
District.

738. The acreage available in the native reserve for every head of cattle owned by the Machakos Kamba appears to be in the neighbourhood of four acres. We reach this figure by taking the total area of the Machakos native reserve (approximately 1,385,000 acres), deducting 250,000 acres for fly-infested areas and 140,000 acres for land in cultivation and dividing the result by the total number of cattle owned by the Machakos Kamba as given in section 734 above, viz. approximately 269,000. But it must be remembered that the reserve by itself is not called upon to carry this number, but that very considerable relief is afforded by the neighbouring settled area in which the squatters' cattle are kept, as well as by the permissive use of the Yatta Plateau.

Grazing
Conditions in
Machakos
District.

739. After every allowance for such external assistance has been made, it appears to be the case that each hundred acres in the reserve, which is neither under cultivation nor fly-belt, has to support stock which cannot be far short of twenty cattle and thirty sheep and goats. Stock are, however, usually driven into the *shambas* after harvest, where they obtain a certain amount of sustenance.

740. The Veterinary Officer expressed the opinion in his evidence that, at present, in the best locations, one head of cattle requires about four acres, whereas in some of the worst locations

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as much as a hundred acres may be necessary. He considers that it is reasonable to assume that at present the average carrying capacity of the land throughout the reserve is one head of cattle to thirty acres, apart from the sheep and goats. We think that his views are somewhat pessimistic; but, in any case, it is evident that the reserve is carrying several times the number of stock which it can support in its present condition.

741. The economic problem which presents itself in the Machakos District is briefly:—

This semi-pastoral people possess no more live stock than they require (although many of those which they have are of a useless type), but, notwithstanding this, they own several times more than their country in its present condition can well support. We therefore consider that more grazing should be made available, and shall make recommendations in the next chapter.

742. But an increase of land, granted unconditionally, will not of itself solve the problem. Such an extension would quickly become filled with the natural increase of the present stock, and in its turn be destroyed by overstocking, and so the situation would be aggravated rather than alleviated.

743. In the case of the Kamba, any increase of land which may be made on economic grounds should be accompanied in the first instance by a reduction of the number of inferior stock and by a concerted scheme for reconditioning areas which have been destroyed.

Stock Owned
by Kitui
Kamba.

744. The stock in the Kitui District have never been counted. The District Commissioner estimates that the total number is somewhere between 220,000 and 240,000 cattle and between 400,000 and 500,000 sheep and goats. This, being purely a guess, must be accepted with the utmost reserve.

745. If these figures are approximately correct, it would appear that the Kamba of Kitui District have at least adequate numbers of stock for their economic needs, and are better off in this respect than their Machakos brethren.

746. The District Commissioner informs us that the reserve is carrying more stock than it can well support, although there are not so many signs of the land being destroyed through overstocking, as in the Machakos District. He attributes this partly to the fact that some of the natives are nomadic and, during the rainy season, penetrate with their stock into parts of the district outside the native reserve which are normally uninhabited owing to lack of water.

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747. A memorandum on Land Tenure among the Kamba has been submitted to us by Mr. R. T. Lambert, District Officer, Machakos. It will be found on pp. 1291 to 1297 of the printed evidence.

Land Tenure
in Ukamba
Province.

748. Mr. Lambert states that each stock-owning family has its own particular grazing area, varying in size according to the wealth and number of the family. We do not take this to denote that there is no land over which common rights of pasturage exist, but rather that special reservations are permitted. Such reservations are known as *Isese* (sing., *Kisese*), and they seem to be of the nature of temporary grazing areas, rights in which lapse if the family moves to another part of the district.

749. Mr. Lambert states that the particular object of the system appears to be to supply the family groups with a reserve of grazing, and that *Kisese* rights are jealously guarded and boundaries strictly respected.

750. We consider that the system might with advantage be developed, for there is no doubt that considerable difficulty exists in controlling the use of pasture where a system of communal grazing obtains. This difficulty is clearly expressed in the Report of the Native Economic Commission (Union of South Africa), 1932, para. 105, where it is stated :—

“It is not possible by the voluntary act of individual owners to bring about any necessary limitation of the numbers of cattle grazing on the commonage. If one owner reduces the number of his cattle any other owner is free correspondingly to increase his number.”

CHAPTER IV.

LAND PROBLEMS OF THE KAMBA TRIBE AND PROPOSALS FOR THEIR SETTLEMENT.

The Rights
and Needs of
the Kamba.

751. The foregoing survey has placed us in a position to examine the rights and needs of the Kamba, and to make our recommendations. We shall begin with the examination of their claim to the Yatta.

The Claim to
the Yatta
Plateau.

752. The term Yatta is applied generally to an area of some 946 square miles of unalienated Crown land, bounded on the west by the Thika settled area, on the south-west and south by the Machakos Native Reserve, and on the north by the Mwea extension of the Kikuyu Native Reserve. The part of this area which lies between the Athi River and the Mwitwa Siano is the land to which we shall refer as the Yatta Plateau. It is a flat tableland between the two rivers.

The extent of
Kamba
occupation on
the Yatta
before the
Protectorate
was declared.

753. On the evidence before us, it appears that little use was made of the Yatta by the Kamba prior to the advent of Government. Mr. C. R. W. Lane, formerly Provincial Commissioner, stated in evidence :—

“I was District Commissioner, Kitui, in 1897, which station I opened up. The natives, though not using the Yatta Plains for their cattle at that time, did so when the country became settled.”

Mr. C. W. Hobley stated :—

“There was no sign of native occupation (on the Yatta) (1894).”

Colonel Sturdy :—

“From Machakos to Donyo Sabuk and north [*sic*] to Kitui, the Kamba grazed their flocks and herds.”

Colonel John Ainsworth :—

“The Yatta, which was uninhabited until near a point indicated by the native track to Kitui (1892).”

Lord Cranworth :—

“It was at that time (1905) a very good hunting ground and entirely unoccupied.”

Mr. F. Traill (formerly Provincial Commissioner) :—

“In those days (1899) the Kamba, both of Machakos and Kitui, would have laughed at the idea of their using the Yatta either for grazing or agriculture.”

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754. It would seem that, in pre-Government days, the grazing grounds on the Yatta Plateau proved a constant bone of contention between the tribes which lived in their neighbourhood. Several place names commemorate the struggles which took place between rival Kamba and Masai, e.g. Mwakini Hill (from Mwaki, fire), which is the name of a hill of commanding eminence where Kamba beacon fires used to be lighted in order to warn the tribe of the approach of the Masai marauders, and Mwitā Siano, which means "Empty out the arrows" (i.e. from the quiver) in preparation for an engagement. Both these names are Kikamba.

755. We have unfortunately no further material evidence concerning early conditions on the Yatta Plateau. One thing is certain, that the Kamba had not the permanent and exclusive use of the area, and therefore they have not a complete claim of right to it on grounds of ancient occupation, though they have a nebulous claim in respect of intermittent grazing over an indeterminate area.

756. Ever since 1913 the natives have on numerous occasions been given permission to graze their cattle on the Yatta Plateau on licence. This permission has not been withheld since 1924, and has sometimes been granted on payment of grazing fees and sometimes free of charge. But during this period it has always been represented to the Kamba that the land is not theirs as of right.

Extent to which the Kamba have been allowed to use the Yatta in later years.

757. The economic survey which we made in the last chapter shows that, although the average household has not more cattle than are necessary for its requirements, the reserve is already overstocked, and we are of opinion that it cannot be reconditioned without the provision of more land, and any scheme for improvement would be heavily handicapped if land of which the Kamba already have the permissive use were to be taken away. The last occasion on which permission to use the Yatta Plateau was withdrawn was in 1924, and heavy mortality of stock ensued, partly on account of stock diseases and partly through starvation. We therefore consider that the Yatta Plateau should be added to the Kamba Native Reserve on economic grounds. This will remove any apprehension on the score that the use of it may again be denied to the tribe.

The extent to which the use of the Yatta is necessary to the Kamba

758. We shall not propose that the Kamba should have the remainder of the Yatta as we do not consider that it is required by them on economic grounds; moreover it is, in our opinion, required to satisfy the future needs of other natives. We have already proposed that the northern part of it be added to the Kikuyu Native Reserve as an extension (Class B. 1) on economic grounds, and we shall deal with the eastern part beyond the Mwitā Siano at a later stage in our Report.

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Recommendation regarding the Yatta Plateau.

759. We recommend that the Yatta Plateau, an area of some 300 square miles between the Athi and Mwita Siano Rivers in the position shown on the sketch plan at the end of this chapter, be added to the Kamba Native Reserve as an extension (Class B. 1) made on economic grounds.

760. We do not deny that the Kamba had certain claims on historical grounds to an extent that they made intermittent and partial use of the land, and this might give colour to a claim that a proportion of the land, perhaps a quarter, should be added to their territory as Class A. When we deal, in the third part of our Report, with the distinctive safeguards to be provided for "A" and "B. 1" areas, it will be appreciated that the distinction is not very vital, and in either case an adequate security is conferred. But the claim, nevertheless, is worth something, and we propose to satisfy it. While the Yatta Plateau, in our submission, should be granted as Class B. 1, we shall recommend that satisfaction for the claim of right should be found by a grant of a further area as Class A. The position of this area will be shown below (sections 783 to 791).

761. We recommend as an absolutely essential condition of the addition of the Yatta Plateau to the Kamba Native Reserve, that the grant be accompanied by strict conditions of conservation, and that a scheme of utilization be formulated, which should have as its principal object the reconditioning of the reserve.

762. It will be noticed that we have recommended the Yatta Plateau to be added to the "Kamba Native Reserve" and not specifically to the Machakos (Ulu) Reserve or to the Kitui Reserve. This is because in the third part of our Report we shall recommend that, for all purposes of the Lands Trust Ordinance, the Kamba Reserves should be regarded as one. (Schedule following section 1510.)

Claim in respect of the Western Boundary between Machakos and Sultan Hamud.

763. The natives state that since the 1906 boundary of the reserve was proclaimed, a strip of land of varying width has been lost to them on their western boundary. A study of the map shows that the new boundary has been of a give-and-take character, and, although in some places small areas have been excised from the reserve, in others they have been added, and it would appear from the map that any gain or loss on balance is small.

764. At the same time, we are advised by the Survey Department that owing to the loose wording of the 1906 definition, it has proved impossible accurately to delineate the boundary on a map, and therefore any figures based on an attempt to put it on paper must be accepted with the utmost reserve. But, owing to the give-and-take nature of the boundary, we are satisfied that the tribe as a whole has no ground for complaint, though possibly

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there may have been cases of individual hardship. As the natives appeared to be dissatisfied with the present position, we requested the Provincial Commissioner to arrange for detailed statements to be recorded from any natives who felt that they had suffered definite loss by the altered boundary. 187 statements were recorded by the District Officers at Machakos, and a précis of these statements stands in evidence (pp. 1396 to 1419).

765. The Provincial Commissioner, in forwarding these statements commented :—

“After careful consideration, I have arrived at the following conclusions :—

- (a) That there was more than adequate land in the reserve to accommodate the natives evicted by the alteration of the boundaries.
- (b) That the occupation of land between the 1906 boundary and the present boundary occurred in the early part of this century.
- (c) That most of the evicted occupants, having been born within the boundaries of the present reserve, as their statements show, returned on eviction to the place of their birth.
- (d) That, though some losses of cattle did occur as a result of a change from one climate to another, they were nothing like as extensive as alleged.
- (e) That the alteration of the boundary being on a give-and-take basis, except for the area in the vicinity of Machakos, no injustice was suffered by the Kamba as the result of that alteration.
- (f) That, except for the country in the vicinity of Machakos, the evictions along the boundary effected by Mr. Dundas and others were in the nature of steps to prevent the encroachment by Kamba across the established boundary.
- (g) It is clear that the Kamba in the vicinity of Machakos suffered some hardship through loss of grazing by the alteration of the 1906 boundary. The land excluded, about 3,600 acres is known as L.O. 1491 and was certainly used extensively for grazing by the Kamba after the 1906 boundary was proclaimed.

The evictions detailed in the statements relate to a period twenty years ago or more; and it is a well-known fact that the District Commissioners concerned at the time were strong in the support of native interests and would not have stood by if the

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natives had had to endure the serious losses of stock they now allege. Having worked in the Machakos District as Assistant District Commissioner during 1911, I speak with some slight knowledge of these facts. That some hardship and inconvenience occurred there is no doubt, but that heavy losses were suffered is extremely improbable."

766. We are in general agreement with the Provincial Commissioner's conclusions. We consider that whatever hardship, if any, individuals may have suffered through the alteration of the boundary will be amply compensated by the recommendations which we shall make.

Claim to the
Mua Farm
Area.

767. By a former gazettelement of the Native Reserve boundary in 1906, the Mua Hills are shown as part of the Native Reserve. We are satisfied that the land was extremely sparsely occupied and that the inclusion of the Matungulu Hills in the Native Reserve was generally understood to be an exchange for it. The evidence of Colonel Ainsworth and the Reverend C. F. Johnston leaves no doubt in our minds.

768. Colonel Ainsworth was the I.B.E.A. Company's Superintendent at Machakos from 1892 to 1895, and subsequently His Majesty's Sub-Commissioner in charge of the Ukamba Province, and in that capacity he continued at Machakos until 1899. He states in his memorandum that in those early days the native boundary was approximately north from the station (Machakos) through Kasinga to the slopes in the bend in the hills forming the junction between the Iveti and the Mua hills, then for a short distance on the eastern slope of Mua to a point where a stream bed runs out to Kasinga; that with the exception of this small area the Mua hills were not in any way occupied by the Kamba before 1895, in which year, owing to an outbreak of rinderpest in the country east of the Iveti mountains, he gave permission to the Iveti natives to move their cattle to that area; and there was an understanding that, when the rinderpest epidemic was over, the cattle should be moved back.

769. The Rev. C. F. Johnston, the oldest non-official resident in Kamba country, whose experience dates from 1899, states that the Mua hills were not occupied by the Kamba before the station at Machakos was built.

"The top of the Iveti hills used to be the limit. They (the Kamba) came to look over and had their outposts watching the Masai and whenever they had the opportunity they drove their cattle down on to the plains. It was not until the *boma* was established that they really came down on the western side . . . with their *kraals* and their gardens and cultivation . . .

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“ They had begun to go into the Mua hills shortly after the famine. Then during Sir James Hayes-Sadler's time they were moved out of the Mua hills and that was thrown open to European settlement and they were given the territory in the north in place of the Mua hills.”

In respect of the land given in exchange, i.e. the Matungulu location, he states in his memorandum :—

“my first eighteen months in the country were spent at our Mwisuni Station in the Kangundu Location. Drawing a line east and west through that station would cut off a large slice from the present reserve, and in that area there were no people whatever at that time (1899). This area has now a population of around 20,000. In 1900 they began to drive their cattle out to pasture in this area but they were brought home at night. When they were convinced that all danger for Masai was past they built cattle *kraals* out there (1900-01) and shortly whole villages were moved out.” (Evidence, pp. 1436-1444).

770. We are satisfied that the addition of the Matungulu location to the Native Reserve was a full set-off for any small loss of rights which may have occurred on the Mua hills, and it is noteworthy that a resolution by the Machakos Local Native Council held on 27th June, 1932, in order to debate matters for submission to the Commission contains the following clause :—

“From Donyo Sabuk to crossing of Machakos-Nairobi Road, Mugongoni (Muvongoni) River : there is no complaint regarding this section of the boundary.”

771. Our reason for including the matter in our survey is the desirability of removing any misapprehension. It is to be noted that Mr. Johnston considers that the Kamba have been generously treated with regard to the area gazetted as reserve, though he thinks that they require more grazing and that the Yatta Plateau would be adequate in this respect.

772. Ngaleni Farm is an area of approximately 100 acres in a central part of the reserve. The Kamba allege that when the freehold grant was originally applied for by Mr. Stuart Watt, no objection was raised by the natives, because they understood that the land would be used for mission purposes, and that it was in fact used for such purposes for a number of years. It is now a fruit farm.

Claim to
Ngaleni Farm
L.O. 4969.

773. The Kamba claim to the land is not disputed, but the extensive additions which we shall propose to be made to the Native Reserve in another quarter (section 791, below) will provide adequate compensation to the tribe, and we have no evidence that any individuals have been adversely affected or have special claims. At

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the same time we recommend that, should this farm ever come on the market, the Machakos Local Native Council or any individual Kamba or body of Kamba be allowed to bid for it equally with Europeans.

The Momandu
Farm
Exchange.

774. Details of the Momandu Farm exchange proposal which we recommend will be found in the Secretary's précis (Evidence, pp. 1281-1282). The suggestion is that some 20 acres of L.O. No. 1740 be exchanged for a corresponding area of an outspan, L.O. No. 364, in order to permit of the Kamba driving their stock along a certain road without breach of quarantine regulations. All parties have agreed to the proposal which awaits provision of the necessary legal machinery, and we recommend that it be implemented.

Claim to
Mwani Hill.

775. The boundary between the Machakos Reserve and alienated farms passes over the crest of Mwani Hill, half of which is in the Reserve and half in L.O. No. 1758, which has reverted to the Crown. The natives ask that the boundary may be adjusted so that the whole of the hill may be included in the reserve. The reason adduced is that the hill is sacred to them according to custom and is used for religious purposes.

776. The claim has the support of the Provincial Commissioner and, the adjacent farm having now reverted to the Crown, no private interests could be adversely affected. For these reasons we recommend that the claim be granted, and in view of its small size that it be a Class A extension. Some 700 acres are involved.

Access to
Emali Station.

777. The Machakos Local Native Council has asked that an extension of the Native Reserve should be made to include Emali Trading Centre and Railway Station within the Machakos Native Reserve. The suggested extension consists of a corridor two miles wide meeting the railway at points approximately one mile west and one mile east of Emali Station respectively.

778. The Kamba have at present access to the railway by means of public roads, although their reserve has no actual point of contact. It is argued that it would be advantageous for the future development of Emali Trading Centre that it should be included in the Native Reserve and thus come under the authority of the Machakos Local Native Council.

779. We are in sympathy with these arguments and recommend an *ex gratia* extension (Class A) of the native reserve as indicated above and embracing Emali Trading Centre. The total area so added will amount to approximately three square miles.

Crown Land
North of the
Railway
between Sultan
Hamud and
Emali.

780. The area of Crown Land lying between the Ulu Farms and Emali is in our view suitable for white settlement and should be earmarked for this purpose. No native claims have been made in respect of this area, the altitude of which varies from 3,791 feet to 4,025 feet.

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781. Although this land is below the altitude which we should be disposed, in general, to count as "Highlands" for the purposes of the sixth term of reference, we feel that in this case an exception is justified, partly because the climatic conditions are such as to give warrant to this classification; partly because, if it is not included in the Highlands it becomes a small detached area between the Native Reserve at Emali and the European Highlands at Sultan Hamud; and partly because our recommendations in other directions, if accepted, will require certain sacrifices of the European Highlands against which this addition will be a partial, though inadequate, off-set.

782. We recommend that an area of approximately 100 square miles (the exact boundaries to be determined by survey) to the east of Emali should remain at the disposal of the Crown. In making this recommendation, we have in mind the possibility of Simba as a site for a blood and bone fertilizer factory, in which event we consider this area would be required as a grazing area in connexion with the factory. If, however, it is not required for this purpose it should be available as a D area irrespective of race.

Land to East
of Emali.

783. The remainder of the Crown land north of the railway is some 512 square miles, situated as shown in the map which follows this chapter. The Provincial Commissioner and the District Commissioner, Machakos, have proposed that this area should be made Native Reserve, and that the Chyulu sub-location of the Kikumbulu Native Reserve should revert to the Crown. The area of this sub-location is approximately 389 square miles so that there would be a net gain of approximately 123 square miles to the Kamba, if the proposal were implemented.

The remainder
of the Crown
Land North of
the Railway.

784. The population of the Chyulu sub-location is approximately 3,194, and it is estimated that at least 70 per cent are resident outside the reserve on the Crown land between the reserve and the railway. The reason for this is that the water supply in Chyulu is inadequate, and the natives are largely dependent on the use of the railway pipe line. This they apparently enjoy at present by means of an unofficial arrangement with the Railway Administration. Their position is therefore irregular, and their country inhospitable, while the Chyale sub-location and the Crown land, the future of which we are considering, are represented as much better country. The Chyale sub-location in particular is said to be excellent land and sparsely inhabited. Therefore, according to the Administrative Officers it would be greatly to the benefit of the Chyulu natives to be moved.

785. A second argument is that the proposal would have the effect of concentrating all the Kamba north of the railway line,

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thus consolidating the Machakos Reserve and facilitating the administration of the tribe and the provision of roads and social service centres.

786. The natives themselves, while not at present desiring to move, admit that the great distances, which they have now to travel for water, are a serious problem, and that the removal of their honey boxes from Chyulu would not prove a great hardship.

787. We are in full agreement with the Provincial Commissioner, and recommend :—

- (1) That the Chyulu natives be moved north of the railway..
- (2) That the Chyulu sub-location revert to the Crown.
- (3) That the 512 square miles of Crown land, which we are considering, be made Native Reserve, Class A.

788. We do not consider that there is any obligation on Government to compensate individuals for disturbance caused by the move. Should the Kamba feel that any of the 3,194 natives concerned suffer undue hardship, the Local Native Council, in consideration of the substantial addition to the tribal land, should make provision for the necessary compensation.

789. We further recommend that Government should open negotiations with the Church of Scotland Mission, who own the intervening land, with a view to obtaining access for the Kamba between what will be the main native reserve and the Mbwinzao block, by exchange or otherwise.

790. The land to which the Chyulu natives would be required to move is substantially better than that which they would vacate, and they, in company with the rest of the tribe, would gain materially from the consolidation of the reserve and the closer administration and better services to be expected from it. We do not therefore consider that there is any obligation to the Chyulu natives that the land given in exchange should be greater in extent than the land vacated.

791. But in fact the land to be added is greater by 123 square miles than the land to be ceded, and as far as a settlement with the tribe is concerned we regard this as a fair set-off against the small losses of rights which we have had occasion to notice in other parts of the reserve. As far as individuals are concerned we consider that the settlement is also just, for the losses of which complaint is made all relate to grazing land, and, although certain private reservations of grazing are possible under the *Kisese* system, it is still, in general, true to say that grazing is a common rather than a private right. In any case we do not think that a more just

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solution can be found for the settlement of private grievances arising from such disturbance as may have been caused by the alienation of certain lands a generation ago.

792. We do not suggest that the 512 square miles to be added should be divided into distinct areas, of which 389 square miles should go to the Chyulu natives and 123 square miles be directed to other purposes in connexion with general compensation to the tribe. There would be no advantage in such a course. We recommend that the land be a simple addition to the tribal territory, and that the Chyulu natives should be accommodated in it or move to other homes in the reserve as may seem to them best or as their system of land tenure may allow. We do not doubt but that private rights in the land will grow up in course of time, as the method of land tenure becomes more individual, and we do not anticipate that any special difficulties will arise.

793. There has been a mistake in gazetting the western boundary of the Kitui Native Reserve. The intended boundary, believed to correspond with the historical claims of the natives, followed the Manzi Etumo River. But this river was wrongly shown in the surveyor's map as being in the position properly occupied by the Miwongoni River. This mistake could easily have been rectified without detriment to the tribe, except for the fact that the surveyor's map had become the "Deposited Plan."

A mistake in
gazetting the
Kitui Reserve
Boundary.

794. The description in Government Notice No. 394 of October, 1926, which proclaimed the reserves, made reference to the deposited plan, and consequently this mistaken plan now constitutes an authority which cannot easily be set aside, as the Lands Trust Ordinance now stands.

795. According to a map drawn by Mr. A. M. Champion, Provincial Commissioner, the area involved is sixty square miles. We recommend that it be added to the Kitui Native Reserve.

796. We have now completed our review of the various problems peculiar to Ukamba Province. As all the reserves therein are inhabited by the one tribe, we are of opinion that the utmost freedom of movement should be encouraged, and to this end we recommend that one reserve only should be gazetted. This would include the main Machakos Reserve, the Mbwinzao block of the present Kikumbuliu Reserve and the Kitui Reserve.

General
Recommendations.

CHAPTER V.

THE NORTHERN FRONTIER AND TURKANA PROVINCES: RECOMMENDATIONS REGARDING THE MANNER IN WHICH THE LAND IN NATIVE OCCUPATION SHOULD BE HELD AND SAFEGUARDED.

Extent of the
Country and
Sparsity of
Population.

797. The total land in the Northern Frontier and Turkana Provinces, exclusive of the area inhabited by the West Suk, is 116,959 square miles, and the total native population, exclusive of the West Suk, is 120,038, so that the density of population is just over one to the square mile. If we were to consider Turkana by itself, we should find the density to be nearly two and a half. These natives clearly have rights in the land, but they can scarcely be said to have exclusive rights.

Absence of
Tribal
Boundaries.

798. The population consists of several different nomadic tribes and sections of tribes, which cannot be said at present to observe any fixed boundaries; in the light of our present knowledge, we are extremely doubtful of the wisdom of establishing such boundaries, since they may have the result of denying to a tribe access to grazing lands which are vital to it, and to which it previously resorted by arrangement with its neighbours. This consideration by itself would constitute a serious obstacle to the proclamation of native reserves, even if on other grounds they appeared desirable.

Inadvisability
of proclaiming
the land as
Native
Reserve.

799. While it is clearly our duty to propose means for the protection of the natives in the secure occupation of the land, we are averse from recommending that any native reserves should at this time be declared in either the Turkana or Northern Frontier Provinces, excepting only in the case of West Suk and North Pokomo, with which we shall deal later.

800. In the first place the areas are so vast in proportion to their populations that it would amount to an unjustifiable locking up of land, if it were devoted in perpetuity to the exclusive use of the occupant tribes. It is true that a great proportion of the country is so arid and inhospitable that it is difficult to see to what better use it can be put than to afford a home for nomadic pastoralists. But there may be undiscovered sources of wealth, and it would be wrong to put unnecessary obstacles in the way of development of such possibilities as the land may possess in minerals or otherwise. While it is clearly necessary that the native rights must be safeguarded, the elaborate safeguards which we shall propose for the protection of Native Reserves under the Lands Trust Ordinance would be unworkable in such a region and quite inappropriate.

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801. The whole of Turkana is a desolate region of the nature above described, but the Northern Frontier Province, while generally of that character, has also extensive areas of valuable pasture-land, parts of which are also suitable for agriculture. These areas are worthy of much better use than nomadic tribes can give them. At present any attempts to cultivate are frustrated by the game which destroys most of the crops, and the natives are quite unable to cope with the situation either by destroying the game or fencing the land.

802. We do not feel bound to reserve such land exclusively for the natives, since we do not consider that they have established a claim to exclusive possession either on historical or economic grounds, and we believe that it might be in the best interests of the Colony that considerable areas should be leased to non-native individuals or companies, who have the capital to improve and develop them. We do not consider that it is necessary to insist that, in every case, such leases should only be granted if they are directly beneficial to the natives.

803. The employment offered on any farms which may be leased should enable the natives in their neighbourhood to live at a density considerably higher than their present average of one to the square mile, and it is also to be expected that the natives employed on the farms will learn lessons in pastoral methods which, when they return to their homes, they will be able to turn to good account.

804. This argument must not be carried too far, and it would clearly be unjust to alienate the best land to Europeans and leave the inferior land to natives. Although the natives cannot claim exclusive rights, they have a right to be protected and secured in the occupation of sufficient land for their needs, and we have satisfied ourselves after careful inquiry that their proper protection does in fact demand that the whole area, good land as well as bad, should be kept predominantly for their use and benefit.

805. Our general recommendation in regard to the Turkana and Northern Frontier Provinces therefore is that, with exceptions noted at sections 808 and 816 below, the land should not be proclaimed Native Reserve nor be regarded as wholly devoted to native purposes; but that it should be recognized as land in which natives have a prior interest, and leases to non-natives should not be allowed to such an extent as to justify the apprehension that the natives might not have sufficient land remaining for their use. We further recommend that, although the land should not be Native Reserve, the priority of native interests should be safeguarded by a special section under the Lands Trust Ordinance.

General
Recommendations
concerning the land in
the Turkana
and Northern
Frontier
Provinces.

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806. This special section should deal with the question of leases: Power should be allowed to the Provincial Commissioner to set aside land for social service centres and trading centres; and, subject to the approval of the Governor, for residential sites and for townships. Leases which are not of this character should be subject to the approval of the Lands Trust Board; save that, if the Governor disagrees with the decision of the Board, the Secretary of State should decide.

The Leroki
Plateau.

807. In the case of the Leroki Plateau there are special circumstances which have to be taken into account, and we have devoted a chapter (Chapter VI) to their consideration. The conclusion which we reach is that the above recommendation should apply generally to the Leroki Plateau as well as to other parts of the Northern Frontier and Turkana Provinces, at least for many years to come, but that leases of large areas to non-natives on the Leroki Plateau should not be allowed except for purposes directly beneficial to natives. The ultimate destination of this land after the lapse of many years is a matter with which we do not find it necessary to deal.

The West Suk.

808. We recommend that the reserve proclaimed for the West Suk should remain. This is an exception to our general recommendation in section 799 above. The reasons for the proposal and the boundaries recommended will be fully stated in Chapter VII.

The Mukogodo,
the Ndigiri,
the Ilimwesi
and the
Mumonyot
Masai.

809. There are three small sections of Dorobo inhabiting Crown land in the North Nyeri District—the Mukogodo, the Ndigiri, and the Ilimwesi. All these sections claim to be Dorobo, and it would appear that the Ndigiri and Ilimwesi have affinities with the Masai, while it has been suggested that the Mukogodo, who speak a distinct language, may have affinity with the Galla. All these sections used to range the forests which at that time covered much of the land which has since been alienated as farms in the North Nyeri District but, after the farms were alienated, gradually moved into the general neighbourhood of the Mukogodo hills. To this place came also the Mumonyot, a sub-clan of the Laikipiak Masai, who were driven out of Laikipia by the Purko.

The total strength of these four sections which we shall refer to as the Mukogodo taken together was found, in a census taken in 1931, to be 110 men, 103 women, and 182 children; with 2,174 cattle and 1,695 sheep and goats

810. Their representative elders, giving evidence before us at Nyeri, stated their desire to inhabit one reserve together, provided that Government should find them a reserve which is large enough.

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We recommend :—

(1) That the Mukogodo area be detached from the Kikuyu Province and added to the Northern Frontier Province for the purposes of administration.

Note.—The determination of the exact boundaries can safely be left to Government, but we think that the North Nyeri District Council ought to be consulted as well as the natives concerned.

(2) That in so far as the land added may not be sufficient for the natives concerned, either in respect of area or in respect of water facilities, the Provincial Commissioner of the Northern Frontier Province should make the necessary arrangements to set apart a sufficient area for their use and occupation, with particular regard to water facilities.

Note.—The question of an adequate water supply is somewhat difficult and attention is specially invited to the evidence of Mr. Lindsay and Mr. Pugh (Evidence, pp. 1578 to 1588).

(3) That when the Mukogodo country to be ceded by the North Nyeri District has been added to the Northern Frontier Province it should become subject to the same conditions as other land in that province, that is to say, it should be recognized as an area in which natives have prior, but not exclusive rights.

Note.—These Dorobo, as has been stated in evidence, have been “driven like chaff before a wind of progression”, and it might be expected that we should now recommend a definite reserve for them. But they are too small a community to be treated in isolation and we are satisfied that it is a better solution to combine them in one area with the Northern Frontier Province in the manner suggested. The safeguards recommended for the protection of native rights should suffice to give them all reasonable security.

811. There are a few scattered Dorobo in the Laikipia District, notably the Nyambire Dorobo located at the source of the Ainanga river and another group on the Uaso-Narok. We recommend that they be moved into the Northern Frontier Province, where suitable accommodation should be found for them.

The Uaso
Narok and
Nyambire
Dorobo.

812. Apart from the Northern Frontier Somali tribesmen, there are a considerable number of alien or immigrant Somalis from Aden and Somaliland, who are principally engaged in cattle trading. These latter use Isiolo and the Nairobi Commonage as their main centres where they keep large herds of cattle, and are in fact ranching on Crown land. There are also several of them at Kitale, Gilgil and other places.

The Somalis.

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813. The question of a reserve for these Somalis has been mooted, but they are not natives of the Colony; they are foreigners paying non-native poll tax. While we consider that they have a right to be allowed to buy land in suitable places, we cannot see that they have any claim to a Native Reserve.

814. On this subject we are impressed by the comment made by the District Commissioner, Isiolo, at a District Commissioners' meeting of the Northern Frontier Province in August, 1929. He was speaking of the probable consequences of gazetting a Somali Reserve, and the minute reads as follows:—

“He pointed out that Kenya is regarded by the Northern Somali as an El Dorado, and that there could be a further infiltration from Northern Somaliland, and that within ten or fifteen years the problem would have reappeared in a graver form; the area set apart for the Somalis would have proved insufficient, and the Somalis, having obtained political rights and power, would then again demand consideration of their claims.”

815. With these observations we entirely agree. We consider that all legitimate claims of the Somali will be met, if it is provided:—

- (a) That any Somali may apply, on equal terms with other races, for a lease of land in any area where no special privilege of race exists, i.e. a “D” area. This facility already exists, but the Somalis have made little or no use of it.
- (b) That in respect of “C” areas, which are areas in which natives would, according to our recommendations, have prior rights of taking up land on lease, Somalis should have the same privileges as natives.
- (c) That, except as noted below, the area marked 2 and 4 on the map following section 884 be constituted a “C” area. Areas excepted from this recommendation are—
 - (i) such part of area 2 as may be wanted for the Mukogodo (*see* recommendation in section 810 above);
 - ii) such part of area 2 as may be required for veterinary purposes, and possibly for a fertilizer factory; and
 - (iii) the eastern end of area 4, as roughly indicated on the map, such land being considered unsuitable for a “C” area.

Note.—The balance remaining available for the “C” area is some 700 square miles, and we consider that this particular “C” area will prove exceptionally suitable to Somalis, and they should be encouraged to avail themselves of it.

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816. Eighty-six square miles of the North Pokomo Native Reserve are situated in the Northern Frontier Province, and must naturally be excepted, along with the West Suk District, from the scope of our general recommendation that there be no Native Reserves in the Northern Frontier Province.

The North
Pokomo
Native
Reserve.

817. The Game Warden has submitted a memorandum in which he recommends the establishment of a National Game Park in part of the Northern Frontier Province in the neighbourhood of Mount Marsabit, the Matthews and Ndoto Ranges, Mount Nyiro, and the Horr Valley. We see no objection to the proposal, which does not envisage that the few natives who inhabit the country will be displaced, but naturally it must be subject to safeguards, which must provide that the number of animals must be kept down to a point at which there is no danger of their causing impairment to the land. There is hardly any cultivation in this country, but such as there is, near Mount Marsabit and on the eastern slopes of the Matthews Range, must be protected from danger.

Proposal for a
National
Game Park.

818. The Game Warden points out, we think rightly, that the natives will be better off in these respects than if no Game Park is declared. At present, if elephants or other dangerous game increase to the point of becoming a menace, there is nobody to deal with them, but, if a National Park is declared, a European would be put in charge of it, and it would be part of his duty to deal with such matters.

819. The Game Warden further points out that such Dorobo as inhabit this land will never advance from their primitive conditions until they are brought into contact with the white man. We follow him to the extent of believing that congenial work in connexion with the park could possibly be found for some of these Dorobo, and that they would be likely to derive benefit from such a project and undertaking.

820. The value of a Game Park as an asset to the Colony cannot be doubted and, provided that native interests are adequately safeguarded, we recommend that it be proclaimed.

821. In the following two chapters we shall deal with the particular questions of the Leroki Plateau and the West Suk Native Reserve. But before concluding this more general survey we wish to add a note on the economic position. We regard it as important that something should be done to help the natives of the Northern Frontier and Turkana Provinces to make economic use of their livestock. It is not altogether fair to be constantly blaming them for persistent overstocking of their land and for valuing everything in terms of quantity rather than quality, if nothing is done to help them by the provision of stock routes and markets.

A Note on
the Economic
Position.

CHAPTER VI.

THE SAMBURU QUESTION IN RELATION TO THE LEROKI PLATEAU.

The Areas
occupied by
the Samburu.

822. No Samburu Native Reserve has been declared, but the Samburu have for some twenty years past been inhabiting the plateau known as Leroki in the northern part of Laikipia, in addition to the very much larger area (over 4,000,000 acres) to the north and east thereof which they have occupied for a much longer period. The whole of the area is in the Northern Frontier Province, and a map illustrating the regions at present occupied by the tribe is appended to this chapter.

Claims of the
Samburu.

823. The claim of the Samburu to Leroki may be considered both from the historical aspect and from the point of view of their present and prospective needs as regards grazing.

Questions
affecting the
Samburu
Claims.

824. In consideration of the above it is necessary to give some account of the following relevant questions:—

- (a) Who the Samburu are.
- (b) How they came to be in the areas they are now occupying.
- (c) Their population and the numbers of their live stock.
- (d) The extent and character of the land they are occupying, and the degree of its adequacy and suitability to their requirements.
- (e) The claims and objections of other interests and points at issue.

The Samburu
Tribe.

825. In the first place we would refer to an able and interesting memorandum prepared by Mr. H. E. Bader, who was District Officer in Charge of the Samburu between June, 1928, and January, 1931, and who by his close association with the tribe and his careful study of their history is well qualified to speak.

826. Mr. Bader is of opinion that the Samburu come of the same stock as the Masai, but Mr. Colvile, who knows the latter tribe very well, is not in entire agreement with this opinion. The latter gentleman considers the two tribes are only distantly related, if at all, and quoted the difference in the clan names in support of his views; but, in consideration of all the evidence, we can only conclude that the Samburu and Masai are closely related—one of the clan names at least is the same, their physical characteristics and languages are very similar, and their habits and customs approximate very nearly. Mr. Raymond Hook in his memorandum says that the Samburu and Masai are closely related, and that is the opinion also of Administrative Officers who know both tribes. But the cleavage between them occurred many years ago; they

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have since been widely separated, and the Samburu have probably become fused with Dorobo and other tribes. In the light of these facts Mr. Colville's views are not very divergent.

827. The history of the Samburu as related by Lenana, late Paramount Chief of the Masai, and recorded by Mr. Tate, a former Provincial Commissioner, is of interest and is as follows:—

“Many years ago in the time of Mbatian, father of Lenana, the Laikipiak Masai pastured their herds all over the grass country to the west and north-west of Kenya. A time of drought came and the burnt-up plains became insufficient for pasturing so many cattle and goats, and a migration was decided upon. The Laikipiak migrated farther west over the country which is still known by that name (Laikipia), some of them even reaching the Baringo country and thence to the Eldama Ravine and Guaso Ngishu country, where they have to a great extent lost the individuality of their tribe and become more or less merged with the natives of that country. The El Burgo (Purko Masai), the most powerful tribe, took Ngatabus and the country south-east of it, while the Samburu marched north to the Uaso Nyiro, where they stayed for many years until repeated raids drove them north. These people were originally Laikipiak, and were so called from the Masai word “Samburubur”, meaning a butterfly.”

There is no reason to suppose that this story is not substantially correct as the problem of the Samburu had not at that time arisen; few Europeans had even heard of the tribe, and Lenana could have had no possible reason for trying to mislead Mr. Tate.

828. From the evidence of the Samburu Elders, it seems that the Samburu and Laikipiak Masai at one time lived together on Leroki, but as the result of a quarrel the Laikipiak attacked the Samburu and the latter were driven to El Barta and Nyiro. One witness, a man of the apparent age of about 60, says this happened before he was born. When, some years later, the Laikipiak were annihilated by the Purko Masai, it is to be believed that the Samburu had not returned to Leroki, as they took no part in that war. From all the evidence and information before us, it is clear that the Samburu and Laikipiak Masai were closely related, in fact Lenana's statement tends to show they were actually a part of the same people. From Mr. Bader's account and other evidence, it is also apparent that the Njemps, who inhabit the country to the south and east of Lake Baringo, are of the same stock.

829. How the Samburu came to be in the country they are at present occupying is partly answered above. After they had been defeated by the Laikipiak Masai, they remained in the distant north in the vicinity of Mount Nyiro, Marsabit, and El Barta, and

Reasons why
the Samburu
are occupying
the present
Areas.

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so escaped the internecine wars between the various sections of the Masai, but later they were again forced or driven southwards by the Turkana and other tribes pressing from the north. Neumann in 1897 found them south of the Uaso Nyiro River near Lengishu (the present quarantine reserve near Isiolo), but Mr. Tate in his journey to Rendile in 1902 did not meet them until he reached Reti, much farther north, where they had gone after being raided by the Masai and others.

830. They appear to have turned south again in 1904, and in 1909 their villages were found at Engare Ndare south of the Uaso Nyiro. In the same year Captain Stigand found them along the foothills immediately north of the Leroki Escarpment. In 1912 Messrs. Hope and Archer, finding some of them across the Uaso Nyiro and in the process of penetrating further southwards, moved them back with the intention of confining them to a recognized and naturally determined frontier. In 1915 they began crossing the river again, and for some time the movement escaped notice.

831. In the meantime the Turkana had established themselves along the north bank of the Uaso Nyiro, which the Samburu had previously occupied, and it was not until the former had been removed in 1921 that it was possible to push back the latter.

832. From that time the eastern part of the southern boundary of the tribe was regarded as fixed by the natural line of the river, but it remained to complete the frontier by delimiting a line to the west of that natural boundary. In the same year (1921) Mr. Kittermaster submitted a proposal to that end, and demarcated a boundary known thereafter as the "Kittermaster Line." This was gazetted as one of the boundaries of the Northern Frontier Province in 1924, and the Samburu have since remained in occupation of the region to the north and east of it, including the Leroki Plateau.

833. The officer in charge of the Northern Frontier Province had in the meantime advocated a further extension of the Samburu country to the south for the purpose of including Sugota Banyaban and the Balagalani River, but the Colonial Secretary, to whom the matter was referred, intimated in reply that ample accommodation for the Samburu had been provided by the then existing boundary agreed upon by Messrs Kittermaster, Castle-Smith and Hodge, i.e. the "Kittermaster Line", and withheld his approval.

834. The above movements are more fully reported in the *précis* (Evidence, p. 1447 to 1462), in which also a chronological account of the action taken is given. A map will be found at the end of this chapter.

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835. The date of the re-occupation of the Leroki Plateau by the Samburu is not certainly known. According to some accounts, a section of them occupied the area jointly with the Masai before the latter were moved to the present Masai Reserve in 1911/12, and it is on record that Mr. Chamier, a former District Commissioner, took tribute of 5,000 head of cattle from the El Masula section of the Samburu on Leroki in 1911, but the Masai move may have begun by that time. It is possible that the Purko Masai may have allowed the Samburu certain grazing facilities on Leroki, but we cannot believe that they gave them permission to occupy the area as a matter of right, or that there was any considerable occupation while the Masai were there. It is unlikely that the two tribes were on very friendly terms, and the Masai, who no doubt regarded the Samburu with supreme contempt, as they do to this day, would certainly not have allowed them the use of any grazing which they required for their own flocks and herds.

836. We must conclude, therefore, that the Samburu only began to re-occupy the Leroki Plateau after the Masai move had commenced in 1911, but it is clear that they then did so with the acquiescence of Government officers.

837. The sole claim of the Samburu to the Plateau on historical grounds rests upon the fact that they occupied it some 60 years ago as a section of the Laikipiak Masai or jointly with them, and we cannot concede, in view of all the circumstances, that such a claim can be held to be either valid or conclusive. In those days might was right, the Samburu were driven from Leroki by the Laikipiak Masai, and were quite incapable of recovering their lost territory from them or from the Purko Masai, who subsequently occupied the area.

838. A census of the people and stock on Leroki in 1928 was made by Mr. Bader and his figures are as follows:—

<i>Samburu.</i>			<i>Stock.</i>			Population and Stock.
Stockowners	...	1,027	Cattle	...	62,314	
Moran	...	763	Sheep and goats	...	49,126	
Women	...	1,681	Donkeys	...	3,318	
Boys	...	1,563	Camels	...	189	
Girls	...	1,540				
Total			Total			
	...	6,574		...	114,947	

839. The population figures are not in dispute and of the stock we need only concern ourselves with the cattle. At the time of the census, it was estimated that approximately half the cattle owned by the tribe were on Leroki, and assuming this to be

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correct, it follows that the Samburu altogether then possessed some 120,000 head. Details of other counts and estimates will be found in the précis, and tend to confirm Mr. Bader's figures.

840. A recent count and estimate has further been made by the Veterinary Department. The result is given by the Chief Veterinary Officer in his V/1/169 of 29th April, 1933, as follows:—

SAMBURU STOCK CENSUS, 1933.

Section	Cattle			Sheep	Goats	Donkeys
	Males	Females	Calves			
Central ..	13,580	22,517	5,212	21,000	15,000	3,000
Southern ..	12,720	21,130	6,086	23,333	11,285	2,469
Northern ..	9,694	22,069	6,035	20,503	22,709	4,267
	35,994	65,716	17,333	64,836	48,994	9,736

Total Cattle 119,043
 „ Sheep and Goats.. 113,830
 „ Donkeys 9,736

Grand Total, Live Stock 242,609

841. In addition to the above it is estimated there were some 10,000 head of cattle in the area to the east of the Matthews Range, where no census was made, and this would bring the total number of cattle in the district to 129,043.

842. All the above figures include the Turkana cattle on El Barta, which are estimated at about 10,000 head, so the number of cattle owned by the Samburu is approximately 119,000.

843. The evidence of the District Commissioner, Rumuruti, and of European farmers tends to show that the Samburu make comparatively little use of the Leroki Plateau for their cattle, particularly of the higher parts, and that the census of Mr. Bader in 1928 is unreliable.

844. Mr. Bamber doubts if there were 6,000 head on Leroki in 1930, and Major Luxford and two other gentlemen who made a recent independent count, could only find about 28,000 head there.

845. While it must be admitted that the official figures of native-owned cattle are not always very reliable, and that the counting of them, owing to seasonal and other movements, is a difficult matter, we must conclude that Mr. Bader's census in 1928 and that of the Veterinary Department in 1932/33, are approximately accurate, and indicate the extent to which the Samburu make use of Leroki as a grazing area. That they also use the higher region in the north of the plateau is apparent from the

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evidence of Mr. Stone, Provincial Commissioner, Northern Frontier Province, and of Mr. Cornell, District Commissioner in charge of the Samburu District. The former states that in June of last year (1931) he went almost to the northern extremity of Leroki, and saw large herds of cattle grazing there. We ourselves travelled extensively in Leroki and observed little or no superfluous grazing in the area generally, though game and locusts may to a great extent have accounted for this condition; we saw few cattle in the high altitudes, but considerable numbers in the neighbourhood of Lake Kisima. We noticed, however, that a great deal of destruction was being caused to the forest by fire and consider that steps should be taken to preserve it.

846. It has been contended that the Samburu, from the name sometimes applied to them—"Loibor Kenejie" (of the White Goats), corrupted by the early travellers into "Purkenejie" or "Burkenejie"—were not originally a cattle-owning tribe, but although Government protection has doubtless enabled them largely to increase their herds of recent years, it is clear from Von Hohnel's book that they possessed large numbers of cattle as far back as 1887, when Count Teleki met them on his journey to Lake Rudolf. The names of two of the main clans also indicate that they have always been cattle owners.

847. The plateau may be said to comprise roughly all the high land between the so-called Kittermaster and Coryndon lines. The position of this latter is uncertain, but appears to follow the foothills of the escarpment to the north. The survey figures of the area give it as 870 square miles, of which only 300 square miles are said to be suitable for European settlement, and 130 square miles are forest. We have not been able to obtain a description of the remaining area of 440 square miles, but it is believed to consist largely of barren, precipitous, lava hills of little value for stock or agriculture. A more detailed account of the character of the plateau will be found in the précis.

Character of
the Leroki
Plateau.

848. Europeans consider the Leroki Plateau or part of it, to be suitable for cattle and mixed farming, but more particularly for sheep. If it became available for settlement, farms of from 10,000 acres to 20,000 acres are envisaged at first as economic units, and on this basis from 10 to 20 farms would be allotted, of which some might be without water.

849. A very comprehensive description of the land north and east of the Coryndon Line will be found in the précis, but we considered there was insufficient information regarding its stock-carrying capacity and of its potentialities in that respect by improving the water supply and other methods. With the object of obtaining such information the services of Mr. Hodge, an experienced

Character of
the Land
North and
East of the
Coryndon
Line.

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District Officer, Mr. Langridge, a Reconditioning Officer, and Mr. McConnel, a Hydraulic Engineer of the Public Works Department, were obtained. The above officers made extensive tours of the area and their reports will be found in the evidence; they are to the effect that the country is insufficient to carry the stock which use it and that, in fact, it is so seriously overstocked that signs of denudation and soil erosion have already appeared. The area generally is described as barren in the extreme, much of it is fly-infested and its stock-carrying capacity very low. Mr. McConnel was of opinion that the provision of additional water supplies would be of little value, and would, in fact, tend to accentuate the overstocking evil. Mr. Hodge and Mr. Langridge considered the construction of three or four dams would be beneficial, but would not materially add to the available grazing.

850. In spite of the evidence of certain Europeans who have some knowledge of the country, to the effect that it would, or could be made, without much expense, to carry all the Samburu stock including those which are on Leroki, we feel we cannot disregard the views and opinions of the above officers, and they are, moreover, confirmed by Mr. Bader and other officers who have been in charge of the district. Mr. Glenday, in commenting on the large extent of the area, pointed out that it was futile to discuss it in terms of acres.

Suggested
Alternative
Areas for the
Samburu.

851. In view of the cogent and insistent claims of Europeans to Leroki, and the fact that it might well be regarded as White Highlands though not recommended as such by the sub-Committee of Executive Council sitting in 1929, Government has endeavoured to find some alternative areas, in which the Samburu and the cattle which are now on the plateau could be accommodated without undue hardship to the tribe. We shall review the various recommendations which have been made.

(1) Round
Table
Conference.

852. At a round table conference held in 1928 details of which will be found in the précis, a resolution was passed to the effect that an area in the southern part of the Northern Frontier Province was capable of maintaining the stock which now makes use of the region between the Kittermaster and Coryndon lines. In regard to the extension of settlement areas in the north, it was further agreed at the conference that Government be urged to seek the approval of the Secretary of State to the proposal to remove a part of the Samburu tribe as early as possible, presumably implying thereby that the Samburu be removed from the Leroki Plateau.

(2) Sir Edward
Grigg's
Recommendations
of 1929.

853. Sir Edward Grigg, whilst in London in July of the following year, forwarded a report of the meeting to the Secretary of State, with certain recommendations to the effect that the Samburu should return to their area on the Uaso Nyiro, but the

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latter in reply intimated that further information was required before he would decide whether or not the proposals should be further pursued; he assumed that the unalienated Crown land lying to the south of the Quarantine Reserve would be included in the new Samburu area.

854. Further discussions took place and the Provincial Commissioner, Northern Frontier Province, suggested that in addition to the Isiolo quarantine area of some 450 square miles, the following areas be allotted to the Samburu :—

(3) Suggestion by the Provincial Commissioner.

- (a) A considerable area of Crown land situated in the North Nyeri District at present inhabited by a few hundred Dorobo possessing up to 5,000 head of stock.

- (b) Four farms in the North-Nyeri District.

The Director of Surveys gave the areas of the above as 540 square miles and 60 square miles respectively.

855. The various proposals for extensions of land for the Samburu in substitution for the Leroki Plateau were examined by a Committee consisting of :—

(4) The 1930 Committee.

- (1) Mr. C. O. Gilbert, Acting Surveyor General.
- (2) Mr. L. E. Whitehouse of the Education Department.
- (3) Captain Mulligan, a Veterinary Officer.

The Committee reported on the 22nd February, 1930, and a summary of their findings will be found in the précis. Their ultimate conclusion was that they were unable to recommend that any or all of the areas contained within their terms of reference were sufficient to accommodate the number of cattle on the Leroki Plateau.

856. His Excellency the Governor recommended that a more authoritative Committee should review the whole situation, but no further action was taken, and it was eventually decided to refer the whole question to this Commission.

857. The case for those who claim that Leroki is European Highlands and should be available for alienation to Europeans may fairly be stated as follows :—

The Claims of Other Interests and the Points at Issue

- (a) That when the Masai were moved there was an understanding that the land should be available for European Settlement.
- (b) That the understanding covered the whole area granted to the Masai in the 1904 Treaty.
- (c) That the Samburu have merely encroached on to Leroki and have no claim to the land.

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- (d) That the Samburu are merely encumberers of the land, and are unlikely to use it to economic advantage, whereas Europeans would develop it and make it an economic asset. That the Samburu make little use of Leroki, particularly of the higher parts, for grazing, and that the counts and estimates of cattle which do use it are much in excess of the actual numbers.
- (e) That the Samburu, apart from Leroki, have ample land for their requirements, which could be made, with certain improvements in the water supply, to carry many more stock than it now does, and do not need the plateau on economic grounds; also that they were not originally a cattle-owning tribe, and have only built up their herds of recent years.

Examination
of Arguments.
(a) The Question whether
an Under-
standing
existed.

858. We shall examine the arguments in the order named above:—

(a) There seems to us to be some force in the contention that Government intended the area to be available for white settlement after the removal of the Masai. Mr. Alexander Armstrong states in his evidence that the Land Office informed him in 1910 that the Masai were being removed from Laikipia in order to make room for white settlement, and we think there is little doubt that Europeans generally were under that impression.

859. This impression was probably reinforced by a letter which was sent out from the Land Office in June, 1909 (L.O. File 1231, part 3) inviting Europeans who had land or claims to land in the Southern Uaso Nyiro area to surrender such land rights in exchange for alternative land "within the present Northern Masai Reserve or its vicinity."

860. In reply to a question in Parliament by Sir Robert Hamilton in 1926, the Secretary of State intimated that the Governor had represented that the area concerned had never properly been Samburu country, but had been intended for European settlement by the Masai under the 1911 Agreement.

861. On 1st November, 1927, His Excellency the Governor received a deputation of the elected members of Legislative Council. The late Lord Delamere said that, having known Sir Donald Stewart very well indeed and having had many conversations with him on this and other subjects, there had never been any doubt whatever in his mind, nor had anything occurred to create such a doubt, as to the fact that the land was definitely vacated for the purpose of European settlement. Mr. O'Shea corroborated this view, having taken part in the transaction relating to the surrender of some of the farms (i.e. those surrendered when the Southern Masai Reserve was enlarged).

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862. On the other hand the motive which actuated the Masai in consenting to move is recorded in the preamble to the Agreement of 1911 to have been "That it is in the best interests of their tribe that the Masai should inhabit one area." In contrast to the preamble to the 1904 Agreement, no allusion was made to white settlement.

863. The Secretary of State, in a despatch dated the 30th July, 1925, and again in a despatch in July, 1929, repudiated any suggestion that there had ever been any understanding or undertaking that Leroki would be made available for European settlement.

864. Although the Samburu were in occupation of Leroki in 1911, or soon after, the question of European claims to it would not appear to have been pressed until 13 years later, when the late Mr. Berkely Cole, in a letter dated the 17th May, 1924, addressed to the Colonial Secretary, contended that the Masai would not have moved as peaceably as they did if they had thought they were leaving the land to the Samburu instead of making it available for white settlement.

865. The boundaries of the Northern Masai Reserve as described in the 1904 Agreement are extremely vague and ill-defined; they are given as the Loroghi (Leroki) mountains on the north, and Lake Kisima on the east, and so would appear to exclude a part, at least, of the area now regarded as the Leroki Plateau to the east of Kisima. It is also not clear what is meant by the Leroki Mountains; and the Chief Native Commissioner considers the first line of the escarpment to the south, approximately where the Kittermaster Line now is, was intended. If he is correct in this opinion, the greater part of the Leroki Plateau is excluded from the reserve intended in the Agreement, but others think the range of mountains in the northern extremity of the Plateau would more accurately describe the Leroki Mountains, and we are inclined to agree with them. By proclamation in 1906 that reserve was extended to the north and east by purely geographical lines which are shown on the map as the boundaries of the old Masai Reserve. The object of this large extension to the agreement boundaries is not clear, and it is probable that it was intended to be of a provisional character only. The Masai made no use of it to the north, so far as is known, and the Samburu were certainly in occupation of it by 1909, when Captain Stigand found them on the foothills of the escarpment. This area is also claimed as being available for European settlement on the grounds that it was part of the old Masai Reserve, though it could not well be described as "White Highlands."

(b) The Area
to which the
Understanding
referred.

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Note.—The boundaries of native reserves at that time seem to have been fixed in a somewhat haphazard and indefinite manner; e.g. the boundaries of the Kikuyu Reserve as defined by proclamation dated 1st July, 1906, extended to the Uaso Nyiro and included some 7,000 square miles of country which is not Kikuyu territory.

866. It does not seem probable that Government could have regarded the dry country and barren wastes to the north as suitable for white occupation, or ever intended it for that purpose; the Masai did not make use of it and it was inhabited by other tribes. Unfortunately the boundaries of the Masai Reserve are so vague and ill-defined in the Agreement that it is impossible to say what area they comprised. It is probable that the area included a part of the Leroki Plateau, but we consider Government, in fixing the "Kittermaster Line" as the limit of native occupation and a boundary of the Northern Frontier Province, effected a fair and reasonable compromise; it left available for alienation all but a small portion of what could have been Masai country under the terms of the Agreement which was suitable for Europeans.

(c) The
Argument
about
Samburu
Encroachment.

867. The question of the Samburu claim to Leroki has been discussed in sections 823-837 above, and we agree that on historical grounds their claim is not a very strong one. Whatever claim they may have had dates back before the time of European administration. However logical it might seem to say to the Samburu, "You did not occupy this land when we came, but you did occupy Marsabit, and therefore you must go back there," such a course would be impossible, because that area is now occupied by other tribes and no Government would contemplate the continual moving of tribes for such reasons.

(d) The
Economic
Argument.

868. On economic grounds, we agree generally that Europeans would be able to use the land to better advantage than the natives in their present state of development, but Leroki is somewhat remote for mixed farming, and if surveyed for sheep farms as seems to be contemplated, the area would in the early days of settlement suffice only for 20 farms at the most. Under native occupation it can and does support some 6,000 Africans with their flocks and herds, and the Samburu do sell considerable numbers of sheep; the District has been long in quarantine for cattle.

869. We do not feel we can support an argument that because one community is able to make better use of land than another, the former must necessarily have it, however essential it may be for the latter.

870. Major Tyndall has supplied information regarding surveyed unalienated farms in Laikipia and there is a further large area south of the Kittermaster Line which under our recommendation will be available for Europeans; the addition therefore of

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about 200,000 acres on Leroki is not likely materially to affect the economic situation.

871. The question of the use made of Leroki for grazing purposes by the Samburu has been discussed under the heading of population and stock, and there is little to add. We must assume that at least 50,000 head of cattle are generally grazing on Leroki in addition to large numbers of sheep, goats and donkeys, and apart from forest and the precipitous lava country to the north and west, the area available for grazing is limited to about 200,000 acres, which is approximately four acres to a beast. It cannot, therefore, be said to be understocked.

872. The character of the land occupied by the Samburu, apart from Leroki, has been examined above. As the views expressed had been so widely divergent regarding the suitability and adequacy of the area for the whole of the Samburu tribe, we considered that the question required very careful investigation, and we commend a study of the reports and evidence of Messrs Hodge, Langridge and McConnel, who were especially detailed to make as complete an examination of the country as possible. Their views are in the main supported by all administrative and military officers who have been in charge of the Samburu or Northern Frontier Province, who, without exception, considered that Leroki was essential to the needs of the Samburu; some of them, in fact, strongly advocated a further addition of land to the south of the Kittermaster Line.

(e) That the Samburu have sufficient land without Leroki.

873. We consider the opinions and views of these officers must prevail over those of travellers, sportsmen and others, who merely passed through the country and whose knowledge of it was slight, and who possibly saw it under unusually favourable conditions. Although there may be a good growth of grass after rain for a short period, the nature of the soil will not support it for any length of time and it soon withers and dies.

874. Government has very fully investigated the possibility of finding alternative land for Leroki, and in view of the evidence and reports which we have received we are convinced that there are no alternative areas which would provide an adequate or suitable exchange. In any case it should be mentioned that the whole of the Isiolo quarantine would not have been available, and it is probable that some of the land suggested will in the near future be needed for other purposes.

Conclusion regarding Alternative Areas.

875. The question of the present and prospective needs of the Samburu as regards grazing has been discussed from several points of view in the foregoing parts of this chapter, but there are some further aspects that require examination.

Other aspects of the Samburu Question.

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(a) Turkana.

876. It has been urged that a section of the Turkana, who occupy part of what is recognized as Samburu country, have no right or reason to be there, and should be removed. The history of these Turkana is briefly as follows:—

877. During the period of the war they penetrated to the north bank of the Uaso Nyiro and forced the Samburu to the south of that river. In July, 1919, Sir Edward Northey directed as follows: "Steps must be taken to warn the Samburu at once that they will not be allowed to keep their stock south of the Uaso Nyiro and on no account must they be allowed to build villages. As soon as we have driven, as we must do, the Turkana invaders back into their own country, tell the Samburu that the last named will be forcibly ejected from the south of the river. Limits must be put on the nomadic tribes."

878. An account of the actions taken and of the reasons for allowing them to return and occupy that part of the Samburu grazing grounds known as El Barta will be found in the précis. They have remained in the Samburu District ever since, and appear to have encroached beyond the El Barta Plains.

879. There is reason to believe the Turkana have a claim to the area known as the El Barta Plains, for Captain Stigand found them there 24 years ago, and it would entail considerable hardship on them to move them into the Sugota valley or the Turkana country. We have, in other parts of our Report, visualized interpenetration by tribes as being generally desirable as a remedy for maldistribution, and we recommend that the Turkana be allowed to remain in the district, but we consider their movements should be more strictly controlled than is apparently the case at present.

(b) Tsetse Fly.

880. There is no doubt from the evidence that large areas in the Samburu country are "fly" infested, but it has been stated that the cattle of the tribe are, to some extent at least, immune to "fly". We would hesitate to express any opinion on this latter point, and it seems probable that there are different varieties of "fly" with different degrees of virulence. We have it on the authority of Mr. Bader that during times of drought the Samburu are forced to graze part of their stock in fly-infested areas, and that their losses from trypanosomiasis are considerable. We consider fly-infestation is a serious factor in diminishing the grazing value of the Samburu country.

(c) Game.

881. The whole of the Samburu country, including Leroki, is "Game Reserve", but we understand it is proposed to exclude the latter area. The effect of game on the grazing and water supply is probably not very serious, and that is the opinion of the Game Warden, Captain Ritchie. Game preservation and stock farming would, however, appear to be somewhat incompatible, and although

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we have no desire to interfere with Capt. Ritchie's desire for a "National Park" in that area, we consider the Samburu are entitled to some consideration in respect of it.

882. We consider the figure of 120,000 represents approximately the number of cattle owned by the Samburu, and they have also large numbers of sheep and goats. On the basis that the population is 12,000 it follows that they have 10 head of cattle per individual and they must be considered to be a wealthy tribe in this respect. It has been argued that they do not need so large an amount of stock for their support, and that the numbers might be considerably reduced with advantage to themselves, and the country they occupy. We agree with the view that the Samburu would be better off, and that their country would benefit if large numbers of their uneconomic beasts were disposed of, but even if their cattle were reduced by 30 per cent or 40 per cent, Leroki or some other grazing area would still be necessary for them on economic grounds; they could not all be pastured in the area, apart from Leroki, without seriously increasing the overstocking position which already exists. In Mr. Bader's opinion the Samburu in 1930 had no more stock than was necessary for their requirements under present conditions and there is no evidence to show that they have materially increased, if at all, since that time, but he agrees that they would be better off with fewer and better cattle; and we consider that measures to reduce the numbers of uneconomic beasts are necessary.

(d) Wealth of
the Samburu.

883. The whole position and our recommendations may be briefly summarized as under :—

Summary.

(a) *Historical Claims.*

(1) The claim of the Samburu to Leroki on historical grounds rests upon the fact that they occupied the area as a part of or jointly with the Laikipiak Masai some 60 or more years ago, and returned thereto with the tacit consent of the Government about the year 1911.

(2) That their former grazing grounds in the neighbourhood of Marsabit mountain, to which they went after their defeat by the Laikipiak, are no longer available for them.

They have, in our opinion, only a slight claim to Leroki on the above grounds, and if this were the only reason for granting it to them we should not consider it sufficient.

(b) *Claims of Europeans.*

(1) While we appreciate the fact that there was a general consensus of opinion among Europeans that the Masai were removed from Laikipia in order to provide land for European settlement in that area, and we think that that was also intended by

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Government at the time, we cannot accept the contention that the whole of the old Masai Reserve as defined in the Agreement or by Proclamation . . . was definitely set aside for that purpose.

(2) We are unable to recommend that the Samburu should be removed from Leroki and the land be leased to Europeans solely because the latter might be able to use it to better economic advantage in the future.

(3) We find that Leroki is extensively used by the Samburu for grazing, and that they normally keep about half their cattle there.

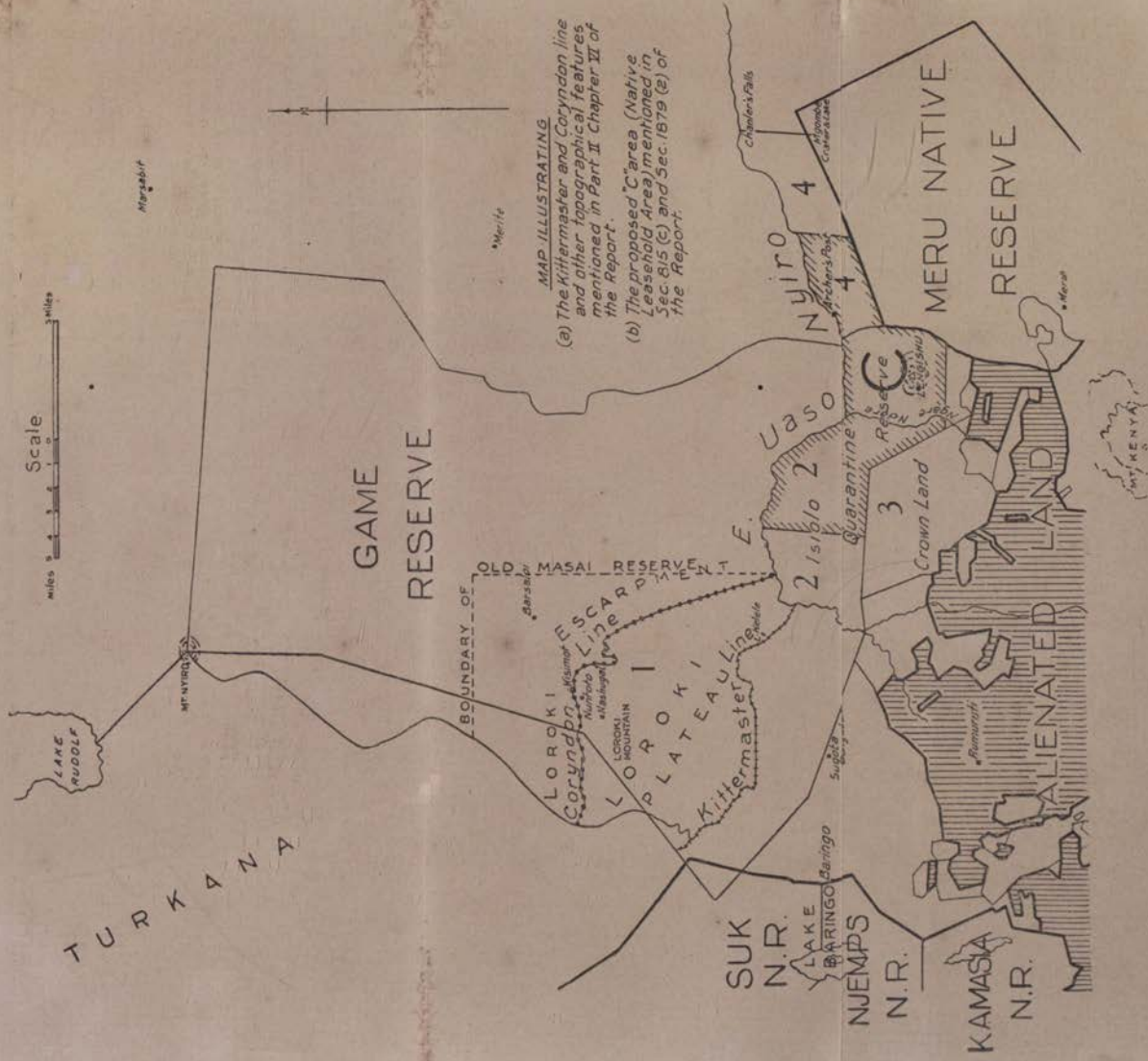
(4) We consider that the Samburu country as apart from Leroki is incapable of supporting more cattle than now make use of it, and is, in fact, already seriously overstocked.

(5) We agree with the conclusion of the 1930 committee that the suggested alternative areas are insufficient to accommodate the Samburu stock which is grazed on Leroki.

Recommendations.

884. Our final recommendations are as follows :—

- (a) That the "Kittermaster Line" be kept as one of the boundaries of the Northern Frontier Province subject to any minor adjustments which Government may consider necessary, and that all the land to the north and east of it, including the Leroki Plateau, be reserved for native use and occupation for such a time as may be necessary. We do not at present recommend that the area be declared native reserve for reasons which we state in Chapter V on the subject of the Northern Frontier Province generally.
 - (b) That the boundary be demarcated in such a manner that there can be no mistake as to its whereabouts.
 - (c) That the forest area on Leroki be demarcated and declared to be Government Forest Reserve.
 - (d) That no leases to non-natives should be allowed on Leroki except for such purposes as are of direct benefit to the natives (*e.g.* a creamery with a reasonable amount of land for grazing purposes), provided that plots for purposes of administration, trading, or social service should be allowed, and also small plots for residential purposes not exceeding fifty acres.
 - (e) That such area to the north and east of the Coryndon Line as Government considers necessary, should, subject to adequate protection of native rights and interests, be set aside as a "National Park" under the supervision of the Game Department.
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CHAPTER VII.

THE LAND PROBLEM OF THE WEST SUK. (TURKANA PROVINCE).

885. The land problem of the West Suk is the same which recurs with monotonous frequency among almost all the pastoral tribes. The love of accumulating live stock for its own sake without regard to quality or market value has produced a state of things whereby the country is heavily overstocked and is deteriorating. Any attempt to find a remedy by an addition of further land would be fruitless unless it is accompanied by other remedial measures which will go to the root of the evil and educate or force the people to have more respect for their land and to regulate the numbers and improve the quality of cattle which they keep on it.

The Nature of
the Problem.

886. It is clear, therefore, that a solution must be sought along two lines; first, better pastoral methods, and secondly, if circumstances permit, an addition of pasture-land to relieve the position and allow a respite until those better methods can be taught or enforced.

887. A short preliminary survey of the economic position will illustrate these points, and we can then proceed to our recommendations.

888. The area of the district is in the shape of a pestle and consists of two plains separated by a central range of hills. It divides itself naturally into four parts, viz. (a) the Northern Hills; (b) the Southern Hills; (c) the Eastern Plain, and (d) the Western Plain. We shall begin with some general remarks about the district as a whole, and shall subsequently consider the four sections in greater detail.

The Area and
Density of
Population.

An interesting economic survey of the district has been submitted by Mr. E. M. Hyde Clarke, District Commissioner (Evidence, pp. 1736 to 1755). In the following paragraphs in which we offer a short account of the economic position of the West Suk we have relied principally on the figures which he has supplied. There are, however, two discrepancies between his figures and official figures which it is necessary to explain :—

Mr. Hyde Clarke has estimated the area of his district as 3,300 square miles; the Surveyor General's figures are 1,812 square miles for the native reserve. But the figures are to a large extent reconciled by the fact that certain land to the north and west of the Swam river, approximately 1,315 square miles in extent, is

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counted officially as part of the West Suk District, though not yet gazetted as native reserve, a point which the Surveyor General has covered in a footnote.

Mr. Hyde Clarke has estimated the population at 24,000. The official figure for 1931 is 24,788. In the course of 1932 some eight thousand of the population migrated to Uganda, but it does not yet appear whether the move is permanent or not, and for the purpose of appraising the economic situation it is safer to work on the basis of the 1931 figures.

These points being noted, we find Mr. Hyde Clarke's figures to be sufficiently accurate to afford a broad survey of the position.

889. The following table shows approximately the density of the population :—

Section	Area Square Miles	Population	Density per Square Mile
Northern Hills..	1,400	5,400	4
Southern Hills..	400	9,100	23
Eastern Plain ..	600	1,100	2
Western Plain ..	900	8,400	9½
	3,300	24,000	7

890. The exports of stock amounted in 1931 to some 400 cattle, 8,000 sheep and goats and 50 donkeys of a total value of approximately £1,575. Since the world depression set in, trade in ghee and hides has practically ceased owing to the fall in prices. There is, however, a considerable trade in tobacco which is bartered with the Turkana for sheep and goats.

Conditions in
the Northern
Hills.

891. The Northern Suk hills comprise the Chemerongit and Sekerr ranges north of the Marich Pass. The people are not the Hill Suk proper, but are natives who have been driven there by pressure of their former enemies, the Karamojong on the west and the Turkana on the east, and have since been kept there by the Administration. They live on the edge of the area for the most part and graze their stock, not on the hills which are unsuitable, but on the northern extension of the eastern and western plains. The hills themselves are described by the District Commissioner as "arid, rocky, barren and precipitous and covered only with scrub, valueless alike for grazing and agriculture." He does not think that any scheme for conditioning would succeed, nor does he consider that any territorial expansion is possible, as the surrounding areas are also inhabited by pastoral natives whose grazing is inadequate.

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892. The total live stock in the Northern Hills is estimated by the District Commissioner at 74,000 cattle, 95,000 sheep and goats and 5,500 donkeys. This gives an average of 68 cattle, 88 sheep and goats and 5 donkeys for each household of five persons. This is undoubtedly a great many more than are necessary for the support of the natives as pastoralists.

893. The Southern Hills, approximately 400 square miles in extent, comprise the Sondange and part of the Cherangani ranges. Conditions in the Southern Hills.

894. It is the most thickly populated area of the Suk Reserve, comprising some 6,000 agriculturists, as well as 3,100 pastoralists, the density being approximately 23 to the square mile. No information is available as to the extent of agriculture, but the District Commissioner estimates the stock as follows: 30,000 cattle, 60,000 sheep and goats and 700 donkeys. There are open spaces of grassland, alternating with dense forest or bush, while the rainfall is fairly constant in the region of 40 inches per annum.

895. In the opinion of the District Commissioner, this area could be made much more useful by the provision of veterinary services which should be directed to destocking and improving the quality of the stock and to the proper utilization of the pasture. Agriculture should be strongly encouraged in this part of the district.

896. The number of stock owned by the pastoralists per household is approximately 48 head of cattle and 96 sheep and goats. This again must be regarded as considerably more than necessary for their economic requirements.

897. The Eastern Plain consists of some 600 square miles. The ground is rocky, barren and thickly covered with thorn bush, while the denser vegetation near the rivers is heavily infested with tsetse fly. Of the 600 square miles it is estimated that some 400 are fly-infested, and consequently the remaining 200 square miles are heavily over-grazed, resulting in considerable mortality of stock from starvation, and also from tripanosomiasis in the case of stock which enter the fly-belt in their search for pasture. The Eastern Plain.

898. The live stock on the Eastern Plain is estimated at 8,000 cattle, 22,000 sheep and goats and 700 donkeys, giving an average of 37 head of cattle and 100 sheep and goats to a household. This is, in our opinion, in excess of their requirements.

899. In the District Commissioner's view some improvement is possible by means of irrigation schemes and the construction of dams. We have no information as to what in this respect can be done, nor what would be the probable cost, but the matter should be investigated. No expansion appears possible, nor do we consider it desirable.

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THE WEST SUK

The Western
Plain.

900. The Western Plain comprises 900 square miles. It is rapidly becoming covered with dense thorn scrub, which has killed the grass to such an extent that, except for a short time after the rains, grazing is now almost non-existent. It was apparently at one time a valuable grazing ground, but the fatal overstocking has now rendered it almost worthless, although it is still capable of being reconditioned.

901. The live stock is estimated at 106,000 cattle, 130,000 sheep and goats and 4,000 donkeys, giving an average of 83 head of cattle and 101 sheep and goats to a household of five persons.

The Cattle in
Proportion to
the Pasture.

902. If we take as a basis that the average number of cattle necessary for the support of a pastoral family is twenty, which, although opinions differ, is a high figure, it follows that in all four divisions of Suk the natives own several times more stock than are essential for their needs. We will now turn to consideration of the available grazing in order that we may discover whether the pasture is sufficient to carry the stock.

903. Leaving sheep and goats out of consideration for the moment, we find the number of acres available per head of cattle is as follows:—

<i>Acreege per head of Cattle</i>			
Northern Hills	...	...	12 approximately
Southern Hills	...	...	8½ „
Eastern Plains	...	...	16 „
Western Plains	...	...	5½ „

(The fly-infested 400 square miles on the Eastern Plain have not been taken into account.)

904. When we take into consideration the facts: (1) that most of the stock belonging to the inhabitants of the Northern Hills graze on the Eastern and Western Plains; (2) that large areas of the country are unsuitable for grazing at all, and (3) that sheep, goats and donkeys in very large numbers also use the pasture, we cannot avoid the conclusion that the district is grossly overstocked, not only far beyond the carrying capacity of the land, but also far beyond the essential needs of the people. The evidence of the District Commissioner and our own observations during our tour through the district show that the country is rapidly being destroyed, and dense thorn scrub is replacing grassy plains.

905. This overstocking has already had one very serious consequence. Shortage of grazing in the reserve has driven the Suk over the Uganda border, and caused serious friction with the Karamojong.

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906. We find it difficult to speak with moderation of the enormous numbers of stock which the Suk have been allowed to accumulate, and the problem thereby created is extremely serious. This people who were previously agricultural are becoming more pastoral every year. Urgent measures are required and we recommend action on the following lines :—

- (a) An investigation should be made as to how the pastureland can best be reconditioned and the use of the grazing be controlled, and action should be taken on whatever lines appear practicable. This investigation might well be conducted by the Provincial Commissioner.
- (b) Such action as may be possible should be taken to reduce the area infested with tsetse fly, and so increase the grazing area.
- (c) Efforts should be made to reawaken the moribund tendency of the Suk to practise agriculture.
- (d) Immediate steps should be taken to reduce the number of stock.

Note 1.—These recommendations should be read in conjunction with the more general survey on the subject of overstocking which we offer in Chapter X of the third part of our Report.

Note 2.—We have also recommended the inclusion of the West Suk, in one reserve with other tribes (*see* sections 1028 and 1029 below).

907. We now turn to the other side of the problem, and must examine whether there is any land which it would be practicable and useful to add to the West Suk Native Reserve. Two proposals have been made.

908. The first proposal is that 10,770 acres be added to the reserve, namely, six unalienated farms numbered respectively L.O. 5,771, 2035, 2,037, 2,039, two parts of L.O. 2,033 and a part of L.O. 2,038.

There is no suggestion that the Suk have any claim of right to the land, and the proposal is advanced simply on economic grounds. Regarding it in that light we cannot see that the addition of so small a piece of land, amounting as it does to less than 1 per cent of the total area of the reserve, could make any appreciable difference to the situation. Moreover, we have it in evidence and have seen for ourselves that contiguous land which has recently been added to the reserve has not been used by the Suk to any appreciable extent, owing to the incidence of stock disease, and to the fact that this land is higher and colder than the

The Question of adding Land to the West Suk Reserve.
 (1) From Unalienated Crown Land.

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PART II—CHAPTER VII] THE WEST SUK

adjacent parts of the reserve. For these reasons we do not think that any good object would be served by recommending this extension.

Possible
Alteration of
the Suk-
Karamoja
Boundary.

909. A proposal put forward for our consideration is that, by an adjustment of the inter-colonial boundary, the districts of Turkana and West Suk in Kenya and Karamoja in Uganda should be included under one administration.

910. Two reasons have been urged in favour of the proposal :—

- (a) As divided by the official boundary, Kenya has more than its share of permanent water, while Uganda has some superfluous grazing. Amalgamation under one administration would ensure unity and sympathy of control.
- (b) By interpenetration and inter-marriage the Suk are rapidly becoming absorbed by the Karamojong.

911. By a recent agreement of a temporary character, the 1,315 square miles of the West Suk District which is north and west of the Swam river (mentioned in section 888 above) is now administered from Karamoja. This agreement was reached because of constant trespass by the Suk over the official boundary and consequent friction with the Karamojong.

912. In our opinion this proposal, as involving an alteration of a colonial boundary, is outside our terms of reference and we make no recommendation, beyond remarking that, in the circumstances, it appears to merit serious consideration. The matter is one for mutual arrangement between the Governments concerned and the Secretary of State for the Colonies. We have, however, been requested by His Excellency the Governor of Kenya Colony to give careful consideration to the economic requirements of the Suk, in order that the Kenya and Uganda Governments may be in full possession of the facts.

913. The foregoing pages show, in our opinion, irrefutably that the West Suk Reserve is very heavily overstocked, and there is little doubt that, should it be decided to adhere to the official boundary, economic pressure will continue to drive the Suk to trespass over the border, unless the numbers of their stock are very considerably reduced.

CHAPTER VIII.

THE RIFT VALLEY PROVINCE.

914. The land problems with which we have to deal in the Rift Valley Province are those of the Uasin Gishu Masai, the Pokwot (East Suk), the Njemps, the Northern Kamasia, the Southern Kamasia and the Dorobo. It will be convenient to discuss these in that order, but first it will be well to present in tabular form a statement showing the populations and the density per square mile, the Dorobo being excepted.

The Land Problems of the Rift Valley Province.

Reserve	Area Square Miles	Population	Density per Square Mile	
Uasin Gishu Masai..	79	1,431	18	(to nearest unit)
Pokwot	1,640	7,350	4	"
Njemps	250	2,262	9	"
North Kamasia ..	900	20,368	22	"
South Kamasia ..	653	12,887	20	"
Over all	3,522	44,298	13	"

Note.—The District Commissioner, Baringo, in submitting the population figures for Pokwot, Njemps and Kamasia, states that a wide margin of error must be allowed.

The figures for areas have been worked out by the Survey Department and the totals agree with those given in the Surveyor General's analysis of areas for 1932.

915. It is desirable that we should preface our remarks with regard to the Uasin Gishu Masai by a brief statement of their history, taken from Mr. Sandford's History of the Masai.

The Uasin Gishu Masai.

916. In 1860 the Uasin Gishu Masai inhabited the Plateau named after them. They were defeated in battle by other Masai and the tribe was almost destroyed, except for a few scattered remnants. Some of these remnants eventually went to the Ravine, others to Nandi and others to Kitosh in North Kavirondo. Those located in the Ravine rendered considerable assistance to Government in the early days of administration and acquired a certain amount of wealth.

917. In 1904, when large tracts of land in the Ravine District were being alienated to European settlers, the then District Commissioner advised Government that great injustice was being done to the Uasin Gishu Masai. The Land Officer thereupon reserved the only land available—some 9,000 acres.

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918. After the Nandi Expedition in 1906 it was decided to move to the Ravine some of those Uasin Gishu Masai who had gone to live with the Nandi. This was done, with the result that the area became very congested. Representations were made by the District Officer, and in 1909 and 1910 four farms on the Molo river, aggregating 23,900 acres were reacquired by Government and the Masai were informed that they might occupy these areas. The increased area did not, however, prove sufficient and in 1912 some 17,500 acres were acquired from Captain (now Major) Grogan in exchange for an area on the Athi plains. The area surrendered by Captain Grogan was to be used as an extension to the Uasin Gishu Masai Reserve.

919. Considerable numbers of these people have already moved to the main Masai Reserve, and it has been proposed that the remainder should also be moved.

920. The three areas occupied by them are not gazetted native reserves, and the Governor in a despatch to the Secretary of State in 1926 gave the following reasons for not so gazetting them:—

- (1) Their inconvenient situation in respect of each other.
- (2) Their insufficiency to sustain their present stock population, so that trespass upon the neighbouring European farms had for long been a matter of increasingly frequent occurrence.
- (3) The fact that the land is of low cattle carrying capacity, and subject to droughts.
- (4) The brighter prospects of a future in the main Masai Reserve if the natives could be persuaded to make the move voluntarily.

The Governor added that he did not propose compulsion.

921. The total population involved is only some 1,431 natives owning approximately 6,300 head of cattle and 5,200 sheep and goats. Rather less than half are anxious to move, while rather more than half desire to remain where they are.

922. The Provincial Commissioner, Masai, considers that they could be accommodated without great difficulty in the Trans-Mara region of the Masai Native Reserve, and the Masai tribe raises no objection to receiving them, although certain details require consideration.

923. We agree with the reasons advanced for the move and are reinforced in our opinion by the evidence which we have heard from administrative officers and settlers of experience, and although the natives concerned are divided in opinion, we found nothing in their evidence to suggest that they would not be equally happy in the

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Trans-Mara area, which offers brighter prospects of expansion for them in the next generation. We consider that they will be far better off along with the main body of their own tribe, and we recommend that they be moved by Government order.

924. Although we shall review the claims of the Pokwot, Njemps, and Kamasia Native Reserves separately, we have come to the conclusion on the general grounds which will be explained in Part III of our Report that it is in the best interests of all these tribes that they should be combined together in one reserve, although such combination would be without prejudice to any private rights of groups, families, or individuals and tribal rights would be adequately safeguarded (sections 1446, 1796 and Chapters III to VI of Part III *passim*). But when we shall write below of any area being added to the "Native Reserve", we shall be understood to mean the larger unit which we shall recommend to be created, although we shall indicate the tribe for whose particular benefit any addition, though made to the reserve as a whole, is particularly designed.

Claims of the
Pokwot,
Njemps and
Kamasia
Native
Reserves.

925. We believe that these arrangements will be in conformity with the wishes of the natives. We were told in *baraza* by their representatives that they did not desire rigid adherence to inter-tribal boundaries, but would prefer a certain amount of interpenetration and reciprocal grazing arrangements for their mutual benefit, subject of course, to control by the Administration. We are in full agreement and suggest that such interpenetration should receive all possible encouragement.

926. These proposals will be further expanded in a later passage below (sections 1028 and 1029).

927. We shall now examine the case of the East Suk or Pokwot, as they are generally called. They lay claim to Churo, an area of approximately 127 square miles on the Laikipia Escarpment. The claim is based on grounds of recent occupation, economic necessity and present possession.

The Pokwot
Claim to
Churo.

928. The evidence available on the history of Churo is decidedly conflicting. The Pokwot allege that they themselves have always occupied the area. Mr. H. L. Mood, Assistant District Commissioner, in a memorandum written in 1925 said:—

(1) The
Historical
Basis.

"Tax was collected from Pokwot (Suk) residents of Churo from 1902-1909 in kind and from 1910-1924 in cash. It will therefore be seen that the Pokwot occupation of Churo has been permanent and continuous since the administration of the District from Baringo."

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929. On page 408 of Joseph Thomson's book "Through Masai-land" we read in reference to the year 1884 :—

"The greater part of Laikipia—and that the richer portion—is quite uninhabited, owing, in a degree, to the decimation of the Masai of that part, through their internecine wars—a fact that has caused them to retreat from the northerly districts, which are in dangerous proximity to the Wa-suk."

930. As against this Von Hohnel recounts (Teleki, Vol. II, p. 56, the year being 1888) :—

"This neighbourhood, as well as that passed through the day before, was quite uninhabited, and bore the name of Lare Lol Borngishu, or the "Spring of the White Oxen."

931. We have it in evidence that Lare Lol Borngishu is the same as Churo.

932. Mr. C. H. Adams, who was District Commissioner in Laikipia in 1909-1910, states :—

"Churo was occupied by Masai and not by Suk, when I was in Laikipia. There was friendly contact with other tribes on the very edge of the Laikipia Plateau, because the Purko Masai were a very orderly and disciplined people; they were rich and wanted only to avoid trouble with Government."

933. Mr. E. B. Hosking, who was District Commissioner in 1916-1918, states that he had never heard of Churo at all, which is curious, if the Pokwot made as much use of it as they say they did or if tax was collected from them in cash from 1910-1924 as stated above by Mr. Mood.

934. The only conclusion which, in our view, can be justified on the evidence is that the Pokwot have used the region for a considerable time, at least on occasions, as a reserve of grazing in times of drought. They cannot therefore be said to have a complete claim to it, although they have undoubtedly been permitted to occupy it for many years.

935. We must now examine the matter in the light of economic needs. The estimated number of live stock which the Pokwot possess is 100,000 cattle and 275,000 sheep and goats, an average allowance of 68 cattle and 187 sheep and goats to a family of five, which is greatly in excess of their requirements. There is no adequate market in which they could dispose of the surplus, even were they not prevented by quarantine regulations, which have now been in force for a number of years; and even if such a market existed, their degenerate stock is of very little market value. It will therefore be seen that the cattle which is surplus to their requirements is of very little use to them in present conditions, while it is ruining the land.

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936. Beyond question the country is unable to support so great a number of live stock. The reserve in addition to being overstocked, is very ill-watered. The Provincial Commissioner wrote in 1929 :—

“The plain fact must be faced that human life cannot be supported in the Pokwot Native Reserve as it is now situated.”

937. We consider that this is an overstatement, and that in so far as the Pokwot have a poor standard of life it is due to the enormous numbers of stock, far in excess of their needs, which they have been allowed to accumulate. It is on record that in 1925 the Assistant District Commissioner found the country between Lake Baringo, Churo, and Nginyawo “devoid of grazing and water, and covered with the bones of cattle which had died of starvation”; and it has been stated in evidence that during times of drought the need for water is so great that sometimes as many as 20,000 head of Pokwot cattle crowd into Churo, which is outside the present boundaries of the reserve.

938. It would therefore appear that an extension of the Pokwot Reserve is advisable, in order that additional watering facilities may be made available for the use of the natives and in order to provide a reserve of grazing to enable a reconditioning scheme to be carried out in the existing reserve. At the same time a very considerable reduction in the number of their stock is necessary.

939. After hearing the evidence, including that of Mr. H. E. Welby, the Acting Provincial Commissioner (Evidence, p. 1910, *et seq.*) we recommend :—

Recommendations.

- (1) That Churo be gazetted as Native Reserve, Class B 2. (*See section 23 above.*)
- (2) That the grant should be subject to conditions of utilization and control, and, in particular, that, where there is no well-defined natural boundary, a fence should be erected to prevent trespass by the Pokwot in the direction of the Laikipia settled area.
- (3) That rents or grazing fees should be paid, to form the nucleus of a fund for reconditioning the reserve, and to pay the cost of constructing and maintaining the fence.
- (4) That the area so added be approximately 130-150 square miles, but for the purposes of the schedules which follow section 1510 below the area is taken at 140 square miles.

Note.—We consider that the precise determination of the boundaries should be left to Government without any particular recommendation on our part; but we think that the District

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Council concerned should be consulted as well as the natives. The various suggestions which have been made appear at pp. 1773, 1776, 1833, 1911, 1924 and 1925 of the Evidence.

The Njemps.

940. We now come to the Njemps Reserve. The figures show that an average household of five persons has 405 acres available to it and possesses 27 head of cattle and 66 sheep or goats, the allowance of pasture working out at fifteen acres per head of cattle. At first sight therefore it would appear that very generous provision has been made for the Njemps. But, like other tribes, they have persistently overstocked their land, with the result that grave deterioration has set in. The District Commissioner writes :—

“Most of their present country is very barren and practically no grass is to be seen in the low-lying areas, though the flats around the Lake could easily produce good grazing if given a chance. There is an almost total lack of grazing suitable for cattle, and, if any improvement schemes are to succeed, it is essential to rest the areas during the period of reconditioning.”

941. An area of some 78 square miles to the east of the present Njemps Native Reserve toward Ngelesha is claimed by the tribe both on historical grounds and on grounds of economic needs. An agreement was reached in 1921 between the Commissioner of Lands and the Chief Native Commissioner that the area should be formally added to the reserve. The Provincial Commissioner at the time, on the strength of this agreement, informed the Njemps elders accordingly. The area was not however, included in the reserve as gazetted in 1926, the Chief Native Commissioner furnishing the following explanation :—

“The reason is that it is not considered that the areas should be added to the native reserve until the formalities of publication of the details for public criticism had been undertaken. A schedule of such areas is now being prepared by the Land Office and will, it is hoped, shortly be published, after which, provided no insurmountable public objection is received, final notice will be gazetted including these areas in native reserves.”

942. The natives have claimed the area; their claim has been admitted by Government, and they were officially informed several years ago that they would be granted the land. We recommend that it should be granted to them as Native Reserve, Class B 1.

943. We consider that with the extension above recommended the Njemps will have all the facilities which they can justly claim either on historical or economic grounds, and although we shall

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in fact propose a further extension of the reserve in this neighbourhood, the use of it is not intended primarily for the Njemps, but for the Kamasia. We shall revert to this subject in section 969 below.

944. We take this opportunity of stating explicitly that in our view there is no obligation either moral or otherwise upon Government to provide unlimited grazing for stockowners of any race, and that the practical remedy for overstocking does not lie in limitless extensions, but rather in the provision of outlets, the culling of uneconomic stock, and strict control of the pasture available.

945. The Kamasia lay claim to the southern part of the forest reserve known as the Grogan Concession, and all the forest as far south as Kilombe hill, from there south to the Molo river, crossing that river at or about the Lower Molo trading centre, and thence to Solai and thence northwards including the strip of Crown and alienated land.

The Kamasia
Claims.
(1) The
Historical
Basis.

946. The evidence before us proves definitely that in the early days the Kamasia did not live on the east of the Molo river for fear of the Masai. The following extracts may be quoted :—

Mr. F. W. Baillie : “When in May, 1904, I shot over the country it was comparatively well grassed country, and the only cattle grazing were Masai cattle, who moved, according to the time of year, into the hills on the east.”

Mr. D. Fawcus : “In 1906 there were no Kamasia at all anywhere east of the Molo River. The piece of country east of the Molo river and south of Lake Hannington was not permanently inhabited by any natives, but was definitely looked upon by the Masai as their country, and was spasmodically occupied by them, particularly in wet cold weather, when they came down from the Laikipia Escarpment.”

Marjan Ahamed (a Swahili who served with Lugard) : “The Kamasia were at that time in the hills. They did not go down into the plains, where there was grass, because they were afraid of the Masai.”

947. We therefore find as a fact that, until they were granted the use of it by Government, the Kamasia had no claim to the land which they now occupy east of the Molo River.

948. So far as the claim to the Grogan concession area is concerned, the general question of native rights in this area was the subject of inquiry by Mr. F. W. Isaac, Provincial Commissioner in 1923. We shall have occasion to mention this inquiry during our discussion of the claims made by natives of the Elgeyo tribe. Mr. Isaac found, as a fact, that certain Kamasia had rights in the Lembus Forest. These rights were defined, and the names

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of the right-holders mentioned in a formal instrument signed by the Governor, and under the terms of Major Grogan's licence no further rights can be obtained pending the expiry of the concession.

949. In the opinion of the District Commissioner the Kamasia claim to the farms adjoining Ravine, including the Uasin Gishu areas and the block of farms between the Eldama and Karasuria rivers, is in all probability valid, but the Provincial Commissioner stated in his memorandum: "It is extremely doubtful if the Kamasia formerly occupied as large an area in the south as they do now. Before the arrival of the white man and settled Government, the Masai over-ran the greater part of any of the plains suitable for cattle and sheep. Any other tribes in the vicinity of Nakuru must have kept mainly to the hills and come down to the plains only when the Masai did not need them." This opinion is in consonance with the other evidence cited above, which shows that the Kamasia did not occupy any land to the east of the Molo, and, in our opinion, any land which they may have lost to the west of that river is more than compensated by the additional land which they now use. It cannot therefore be said that they have any claim of right to an extension of their reserves.

950. We shall now examine whether they have any claim based on economic needs.

(2) The
Economic
Basis.

951. The Northern Kamasia are relatively poor in cattle, having, if the figures are to be trusted, approximately five cattle to a household; on the other hand they are well supplied with sheep and goats, the average per household being estimated as fifty. The number of acres available per household appears to be 141, but much of the land is rocky and precipitous. According to the evidence adduced the country is capable of some agricultural development. We do not consider that the position calls for any special action.

952. The case of the Southern Kamasia is more difficult and deserves a more detailed analysis.

953. The figure already given for the population in section 914 above is stated by the District Commissioner to include a number of Kamasia who are living as squatters on alienated land. It is therefore probable that the density of the reserve, shown as twenty to a square mile, is in reality somewhat less.

954. The people themselves are inclined to be pastoral rather than agricultural. From the District Commissioner's estimate, the average number of live stock owned by a family of five is approximately 12 head of cattle and 46 sheep and goats.

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955. The acreage available per head of cattle is approximately twelve, which would clearly be ample were the country in good condition, but, as the evidence shows, so deplorable has the state of the country become that it is entirely inadequate. The reasons for this melancholy condition we shall discuss below, but we have first to describe it.

The Acreage available per Head of Cattle.

956. The following is an extract from a memorandum written in 1928 by the Provincial Commissioner :—

General Condition of the Reserve.

“The hills are volcanic and carry but little soil; at the time of my visit to the area on 17th-20th May, after good rains had fallen, there was practically no grass either on the plains or in the hills. After the rainpools have dried, there is no water of any sort between Solai and the river Molo, a distance of some 18 miles. In the district which we are discussing steep rocky escarpments have to be climbed, over which the weakened cattle can scarcely stagger and often die in doing so.”

957. The Provincial Commissioner supported his statement by quoting various opinions recorded on his files. The following are excerpts :—

Officer in Charge, Kerio Province, to Chief Native Commissioner, 23-9-24 :

“The Kamasia Reserve is very short of grazing and in many parts incapable of producing it, as I can vouch from personal observation.”

Stock Inspector to Senior Veterinary Officer, Nakuru, 2-6-25 :

“From my observation of the condition in Kamasia Reserve over quite a large area, I can only state that so far as grazing for cattle is concerned this is non-existent.”

Major A. E. Smith to the Commissioner of Lands, 26-1-26 :

“I forward my application to hand back part of my farm to the Kamasia Reserve. My reasons for this application are : It is impossible to keep the Kamasia from trespassing. This tribe is notoriously short of grazing for their stock, and this causes them to run their cattle on the farms on every possible occasion.”

Colonel A. I. Lean to H. F. Ward & Co., 19-2-26 :

“The Kamasia Reserve is not only over-stocked but is waterless, and warnings and fines will not prevent native owners of starving cattle disregarding orders, they being of opinion that it is better to pay a fine than to lose all their cattle.”

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W. B. Aubrey, Esq. to the Assistant District Commissioner, Kabarnet, 4-4-28 :

“Personally I do not blame the Kamasia at all for trying to save their stock from death and from starvation.”

958. In consequence of this memorandum an Agricultural Officer was sent to examine the district in 1929, and expressed agreement with the description given by the Provincial Commissioner, and made various recommendations.

959. Since then, two successful bore-holes have been sunk, but the pumping facilities are in our opinion entirely inadequate and should be improved. L.O. 1168 has been set aside as a salt-lick and grazing area for the Kamasia. A Reconditioning Officer, Mr. W. H. Langridge, was appointed in 1930. He has done excellent work, but has been severely handicapped by lack of funds. We are of opinion that the vote for this work should be considerably increased.

960. There is some difference of opinion as to how the present condition of the reserve came about. The view generally held by European farmers living in the vicinity is that over-stocking is the chief cause, a view which is supported by Mr. Langridge, who adds that he considers the damage to be due to goats, rather than cattle. This opinion is not held by the Rev. E. B. Dalziel, a missionary who has lived in the reserve since 1919. He attributes the denudation of the land to a sudden meteorological change shortly before he arrived, and in support of his opinion states that he fenced in a piece of land, which he kept lightly stocked, and from bearing grass two feet high it became a barren patch of land.

961. We have called for the rainfall records for Solai and Kabarnet and also for Nakuru, a neighbouring area and one of the largest maize producing districts in the Colony. They are shown in Appendix No. 10. They certainly do not support Mr. Dalziel in his conclusion, but it is interesting to note that he arrived in Kenya soon after 1916 and 1917, which were two exceptionally wet years, which may perhaps account for the impression he had received.

962. Our conclusion on the matter is that over-stocking (especially by goats) aggravated by the locust infestation during the past five years is mainly responsible for the present situation. In any case it is unquestionable that, economically speaking, the reserve in its present condition is adequate neither for the present nor for the future needs of the Kamasia, and determined efforts are needed to recondition it.

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PART II—[CHAPTER VIII]

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963. The remedy appears to lie in three directions: Immediate culling of stock which would effect an appreciable and speedy reduction of numbers; secondly, that goats should be restricted to certain areas; thirdly, some other area must be found as a reserve for grazing to enable portions of the land to be rested and reconditioned, and to simplify the task of the Administration in keeping hungry stock from the areas which are being rested, and from encroaching on to neighbouring farms.

964. The reserve is not beyond hope of regeneration, and should ultimately be able, if adequate measures are taken, to carry as many or even more cattle than it does now and of a better quality. The natives will gain correspondingly in meat and milk.

965. It now remains to find the necessary extension areas, and we have five recommendations to make in this connexion which will have the effect of increasing the facilities available to the Kamasia by some 122 square miles, of which 23 square miles would be a temporary facility secured by lease, while the rest would be added to the reserve.

966. These recommendations are made in the confidence that Government will devise and apply energetically a scheme of reconditioning to the Kamasia Reserve. If this is done, the extensions will be of great service in allowing the stock to be removed from denuded land while reconditioning takes place. But, if no such steps are taken, the addition of extra land will only add to the area of devastation and complicate the problem. It is impossible to exaggerate the urgency of the need for a comprehensive and active programme for staying the destruction and improving the reserve.

967. We recommend that the land to be evacuated by the Uasin Gishu Masai be added to the Native Reserve as Class B 1, for the use of the Kamasia, except that Eldalat hill, an area of approximately five square miles containing valuable cedar, should be protected as a forest reserve. The balance to be added to the native reserve is approximately 74 square miles.

(1) The Land
Evacuated by
the Uasin
Gishu Masai.

968. If the above recommendation is adopted there will be certain farms on the Esagiri River which will be practically surrounded by Kamasia Native Reserve. They are L.O. Nos. 488, 489, 490, 5249, 5276, 6262, 5461 and 493. All are alienated but only one is occupied. We recommend that Government should open negotiations for leasing these farms, comprising some 23 square miles, from the owners for a period of ten years, and allow the Kamasia the use of them, at the end of which time the situation may be reviewed. We do not anticipate that they will be

(2) The Block
of Farms
between the
Kamasia
Reserve and
the Area now
occupied by
the Uasin
Gishu Masai.

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permanently necessary for the Kamasia but, on the evidence before us, it would appear that they may be required for a considerable time.

(3) A further Extension.

969. It has been suggested to us that beyond or southward of the extension of 78 square miles, which we have recommended in sections 941-2 above to be added to the reserve for the use of the Njemps, a further area might be found for the use of the Kamasia. Two different proposals have been made in this connexion and there is so far no clear agreement between administrative officers as to which of them is the better: one proposal is that the extension be made eastward and that land be added on the top of the escarpment between Ngalesha and the source of the Mukatan river, and the other is that it be made further to the south by the addition of land eastward of the southern end of the Njemps extension.

We shall not attempt to decide between the two proposals, but we consider that a further extension should be made in the one position or the other, and we recommend that approximately 22 square miles be added as Class B 1, making the whole extension up to 100 square miles. Our object in making the recommendation is that more land should be available for the use of the Kamasia. But if it is found more convenient for the Njemps to occupy this land and vacate other land in favour of the Kamasia there should be no objection to any mutually satisfactory arrangement which may be reached by the Provincial Commissioner.

(4) L.O. 1168.

970. L.O. 1168 (920 acres) has been set aside as a salt-lick and grazing area for the Kamasia, and fenced in order to prevent trespass by native stock on adjoining farms. It provides access to Lake Solai. This area was originally set aside on the recommendation of Mr. Lynn Watt, Agricultural Officer, who made a survey of the reserve in 1929. It is desirable that this access should be made secure to the Kamasia, and we therefore recommend that this area be gazetted Native Reserve, Class A.

(5) Land East of the Lembus Forest.

971. There is a piece of land approximately 960 acres in extent to the east of the Lembus Forest. It was marked on survey plans as forest reserve, but has never been gazetted as such, and is in fact treeless and therefore not required by the Forest Department. It is in occupation by the Kamasia and we recommend that it be added as Native Reserve, Class A.

The Dorobo.

972. The Dorobo are, of course, not confined to the Rift Valley Province, and it is only the Mau section which need concern us here. We deal with the other sections under their appropriate provinces.

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973. The passing of the game and forest laws interfered with the primitive mode of life led by the Doroobo, and efforts have been made by the Administration with varying success to induce them to become useful members of native society. They have been encouraged to acquire stock and to cultivate, but unfortunately no land has been reserved for their use. They live, for the most part, in forest reserves, but exception is taken by the Conservator of Forests to the presence of native-owned stock in areas under his control. On the other hand, under present conditions they cannot well be expected to continue to live in the forests without stock.

974. Thus they present a definite problem. Government, having encouraged them to abandon their primitive pursuits, should make specific provision for their land requirements.

975. It must be stated that Government has been fully alive to its responsibilities; a committee was formed in 1929 to consider the future of these people. This committee reported in July, 1931, but as it was considered that the subject came within our terms of reference, it was decided neither to publish nor to implement the report pending the action taken on our Report.

976. We have read the report of this committee, which stands in evidence, and are in general agreement with its recommendations. We feel that action should be taken without delay because the problem will certainly become more difficult the longer action is postponed. The number of Dorobo-owned stock is definitely on the increase.

977. The evidence and memoranda which have been submitted to us, and the various official documents to which we have had access show that a considerable number of the Dorobo are connected, in a greater or less degree, with various tribes in the Colony which have native reserves allotted to their use, and the general recommendation of the Dorobo committee is that such natives should be moved to the reserves of the tribes to which they are affiliated. We are in full agreement with this recommendation.

978. When the Dorobo committee report was drafted, the Mau section of the Dorobo amounted in all to some 379 persons owning 3,317 head of cattle. The evidence before us shows that the numbers of people have slightly, and the numbers of cattle have considerably, increased since that time. A number of these Dorobo are affiliated with the Nandi, the Lumbwa, and the Masai, and the committee have recommended that any who cannot be absorbed into these tribes should be moved to the Chépalungu forest area, in the south-east of South Lumbwa District.

The Mau
Section.

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979. We are in general agreement with this recommendation, but we are of opinion that, in so far as is possible, the Dorobo should be consulted as to whether they would prefer to go to Chepalungu or into another native reserve.

980. We agree with the committee that the Dorobo are more likely to progress and become useful citizens if they live side by side with communities who have already advanced some way along the road of orderly progress, and for this reason, among others, we do not recommend that any part of Chepalungu should be gazetted a special Dorobo Reserve, but that it should be added to the Lumbwa Native Reserve, and we consider that any Dorobo who may be moved to Chepalungu should be given every opportunity of mingling with the Lumbwa not so much with the object of ultimate absorption in view, but rather that they may learn by example gradually to take an active part in the affairs of the district.

981. We do not see how any move of the Dorobo can equitably be carried out without some expense to Government. Many of them have good claims of right to the areas where they now reside, and their removal, although for their own benefit, is also governed very largely by dictates of administrative convenience. Furthermore, they are taxpayers, and as such, should suffer no disturbance without due compensation. We wish to lay particular stress on the necessity for arranging that the Dorobo are fed, until such time as they can make new arrangements. They might further be granted one year's exemption from hut and poll tax.

982. Another matter which will require careful consideration is the fact that Chepalungu is an East Coast Fever area, and any Dorobo-owned stock removed from a "clean" area will in all probability die on reaching their destination. Government should make arrangements to obviate this, and we suggest that the Dorobo stock might be exchanged, through Government, for immune animals.

983. There is one section of the Mau Dorobo which is usually known as the Tinnet, who appear to have better claims than most to remain where they are. They reside in the south-eastern Mau Forest, do not appear to have any very close association with any native tribe, and are strongly opposed to moving. Some of them appear to have resided in or near the south-eastern Mau Forest for a great many years.

984. But we are satisfied that it is in their own interests that they should be moved. They are at present confined to a very limited area, which cannot well be extended and which will shortly be quite inadequate for themselves and their stock and, in virtue

The Tinnet
Sub-Section.

MAP ILLUSTRATING THE RECOMMENDATIONS
REGARDING THE SUK, NJEMPS AND KAWASIA
NATIVE RESERVES

Additions to Native Reserve under Class A shown thus



14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	1221	1222	1223	1224	1225	1226	1227	12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THE RIFT VALLEY PROVINCE
PART II—CHAPTER VIII] PROBLEMS AND RECOMMENDATIONS

of what we may term their insular position, they cannot receive their fair share of the social services provided by Government. We understand further that there is considerable traffic in stock between them and the Lumbwa. The Lumbwa cattle are infected with East Coast fever, while those of the Tinet Dorobo are highly susceptible. It is therefore very probable that it is only a question of time, should the Tinet Dorobo remain where they are, before their cattle would become infected with East Coast fever with disastrous results to themselves and to a less degree to the neighbouring European farms in the Molo District.

985. They speak a language closely akin to Lumbwa and we feel that, once they have settled down, they should be quite happy in Chepalungu.

Note.—The various extensions recommended in this chapter are illustrated in the map here following.

CHAPTER IX.

THE NZOIA PROVINCE.

(a) THE ELGEYO AND MARAKWET.

Native
Reserves of
the Nzoia
Province.

986. The Nzoia Province contains the native reserves gazetted in 1926 under the titles of the Elgeyo, Marakwet, and Nandi Native Reserves. In this chapter we shall consider only the Elgeyo and Marakwet.

987. An administrative boundary is observed between these two tribes, and therefore they are shown separately in the table of population, area, and density which follows. This is useful as an illustration of the fact that the Elgeyo live in conditions of greater density than the Marakwet, but it would be a mistake to regard the two tribes as completely independent and there is in fact much interpenetration between them and reciprocity in respect of the use of grazing grounds.

TABLE OF POPULATION, AREA AND DENSITY.

	Total area of the Reserve	Estimated Population	Density per Square Mile
<i>Elgeyo</i> :—			
In native use	339	16,173	41
Native Reserve Forest . .	23	..	..
<i>Marakwet</i> :—			
In native use	732	13,027	25
Native Reserve Forest	20	..	..
	1,164	34,265	29

Note 1.—The estimates of area correspond with those given by the Surveyor General in his Analysis for 1932.

Note 2.—The population figures are the official estimates provided by the District Commissioner and can be accepted as sufficiently accurate for the present purpose. The Chief Native Commissioner's estimate dated 2nd June, 1933, shows a total of 34,341.

Note 3.—The figures relate only to population living in the reserve. There are also considerable numbers of natives absent from their reserve as squatters; in the case of the Elgeyo the District Commissioner estimates that they amount to 4,000.

THE NZOIA PROVINCE

PART II—CHAPTER IX]

THE ELGEYO AND MARAKWET

988. In order that the needs of the Elgeyo and Marakwet may be the better appreciated we shall offer a brief account of the manner in which they live.

Economic
Condition of
the Elgeyo
and
Marakwet.

The Elgeyo.

989. The Elgeyo country is very precipitous. There is a small strip at the top of the escarpment which is excellent grazing land. It is not used for agriculture to any considerable extent because it is too cold for the crops which the natives favour. Below that the escarpment falls steeply to the Tembach ledge, which is very narrow but contains land suitable both for grazing and agriculture. Below that again the scarp drops down to the Kerio Valley where a hot low-lying plain is inhabited by the Mutei section, in which native food crops are very indifferently cultivated.

990. So far as can be gathered from the evidence and memoranda which we have received on the subject of land, it would appear that agricultural plots are individually owned. The boundaries between these plots are usually marked by stones, which in themselves are often inconspicuous, but which are well known to the natives concerned. It appears that cultivation rights are sometimes bartered for honey, but whether such transactions are redeemable or not is a point which has not been made clear.

991. Grazing rights are common to the tribe as a whole. Any native can graze his stock anywhere irrespective of location. Modification is probably desirable in order that the use of pasture may be controlled.

992. The tribe is said to own 18,855 cattle, 16,937 sheep and 25,405 goats, according to the estimate submitted in evidence, which gives a nominal average of 13 acres available for each head of cattle. But a large extent of the country, probably not less than a quarter, consists of precipitous land which is useless for grazing by cattle and there are also 22 square miles which are native reserve forest. The land available and suitable for grazing is thus reduced to about nine acres per head. When we take into consideration the fact that there are also upwards of thirty thousand sheep and goats to be carried, it is clear that the land is fully stocked. The difficulty of the situation is aggravated by the fact that there are estimated to be some 20,000 Elgeyo cattle and 40,000 sheep and goats being herded by squatters on alienated land. If the contracts of these squatters expire and if their stock has in consequence to return to the reserve, there will be insufficient pasture available.

993. And yet it cannot be said that the Elgeyo have accumulated cattle in excess of their needs, since the average wealth per household is only six cattle and thirteen sheep and goats. It is therefore evident that they require more pasture.

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PART II—CHAPTER IX]

THE ELGEYO AND MARAKWET

994. The course of development for this tribe is clearly along the lines of mixed farming. There are considerable possibilities of agricultural development and some progress has already been made. A shortage of good arable land has sometimes been alleged, but the truth is rather that, owing to their lack of skill, the natives are not making full use of their resources. Much of the land is difficult and requires for its development a greater degree of skill than the natives yet possess, but, as better methods are learnt, more of it will be taken into cultivation, and better yields will be obtained. In this connexion we invite attention to the Agricultural Report on this district prepared by the Agricultural Officer, Mr. C. Maher, in conjunction with the Provincial Commissioner and District Commissioner which stands in evidence (Evidence, pp. 1971 to 1977). In one of the most significant paragraphs of a most interesting report he states:—

“The Elgeyo–Marakwet Reserve from being a land of poverty and semi-starvation might well become a country of plenty and comparative wealth. The natives themselves are at present the stumbling block and their improvement in general health must be considered the first stage in developing the resources of the reserve.”

995. Meanwhile the position is that the natives are very poor agriculturists and stock farmers, and we have to consider what additional facilities in respect of land might help to ameliorate their position.

The Marakwet.

996. In Marakwet an average household has 126 acres of land available to its use, and possesses 4 cattle and 23 sheep and goats, so that, on figures, there would be more than twenty acres for each head of cattle. Even after writing this figure down considerably to allow for the large proportion of unusable land (which is scarcely as great as in Elgeyo) there is nothing in the calculation to suggest that the Marakwet have insufficient land.

997. In the following sections we shall propose that certain additional grazing lands should be made available for the use of the Elgeyo and the Marakwet (including the Cherangani). But we wish to emphasize the fact that, while these facilities should be of great service, the land problems of these tribes cannot be solved simply by addition of territory. Permanent improvement can only be attained by the learning of a better agricultural and pastoral practice, a matter of special importance in so difficult a country.

**Claims by the
Elgeyo.
(1) Rights in
the Grogan
Concession.**

998. The Elgeyo claim on historical grounds the right to graze their flocks and herds in the land known as the Grogan Concession, a forest of some 328 square miles. The reason for the term “Grogan Concession” is that certain rights in the area have been ceded to Major E. S. Grogan by a concession which expires in 1957.

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THE ELGEYO AND MARAKWET

999. The Elgeyo allege that they have always used the pasture land in this area, and state that, about the time when Government arrived, the Kamasia also started to graze their cattle in the southern block, which is known as the Lembus Forest.

1000. When the concession was granted to Major Grogan a clause was inserted in the deed safeguarding native rights as they existed at certain dates in respect of particular areas defined on the map attached to the document, but it was provided that the Governor should cause such rights to be ascertained and defined within a reasonable period.

1001. To this end Mr. F. W. Isaac, the Provincial Commissioner, conducted an investigation and found as a fact that, while the Kamasia and certain Dorobo had rights of grazing stock, residence, cutting fuel, etc., in the Lembus Forest, the Elgeyo had no rights either there or anywhere else in the area of the concession. Government accepted Mr. Isaac's report, and the rights of the Kamasia and Dorobo and the names of the individual right-holders were officially recognized and defined in a formal instrument signed by the Governor in December, 1923. In consequence of this definition the Elgeyo were moved and the Kamasia and Dorobo were allowed to remain. This discrimination rankles with the Elgeyo to this day.

1002. Although a memorandum prepared by Mr. E. B. Hosking and Mr. Juxon Barton makes out a strong case in favour of the Elgeyo, which is supported by a memorandum by the present District Commissioner, it must be presumed that Mr. Isaac gave the matter careful consideration and that his finding, which was accepted by Government, was based on a full view of the evidence available. In his evidence given to the Chairman in England, he stated explicitly that in the early days there were no Elgeyo living on the top of the escarpment.

1003. We therefore accept it as a fact that the Elgeyo have no sound historical claim to the area under consideration.

1004. In any case, the native rights in the Grogan Concession have been officially defined, and, in accordance with the terms of the licence, no further rights can be obtained until the concession expires in 1957.

1005. The Forest Department has power to issue grazing licences in open forest glades, and some Elgeyo have taken out such licences, though no permanent rights are thereby created. We recommend that the Forest Department should give preference to the Elgeyo in this respect in so far as may be possible.

1006. In 1957, it may be advisable to grant rights to the Elgeyo on economic grounds.

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PART II—CHAPTER IX]

THE ELGEYO AND MARAKWET

(2) The
Eldoret
Water Supply
and Tomeiyo
Exchange
Proposals.

1007. We have seen that the Elgeyo will in all probability require more grazing in the near future and that it is undesirable that their stock should be greatly reduced in numbers, although there is much room for an improvement in quality. An exchange of lands has been proposed by which the Elgeyo would receive considerably more grazing, the Grogan Concession more hardwood, and the source of the Eldoret Water Supply would be protected. The details are very fully set out in the Secretary's précis at pp. 1931 to 1938 of the printed evidence together with a statement of the various opinions and suggestions which have been advanced. A very large measure of general agreement had already been secured before this Commission was appointed. It was proposed that the Elgeyo should give up :—

Area A forest land (largely scrub)	...	...	2,919 acres
Area B forest land (hardwood)	...	...	384 acres
Area C forest land (hardwood)	...	...	1,630 acres

Total ... 4,933 acres

all of which are in the gazetted Native Reserve, in exchange for .—

Area D grazing land	...	3,850 acres, gazetted Forest Reserve, subject to Major Grogan's Concession.
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Area E grazing land ... 1,129 acres Crown land.

Total ... 4,979 acres

1008. Major Grogan's consent has already been secured, and the Elgeyo Local Native Council has passed a resolution favourable to the proposal. We consider it fair to all parties, and very obviously to the advantage of the Elgeyo. We recommend that it be implemented. (The proposal is illustrated in the map which appears at the end of this chapter.)

(3) L.O. 1869.

1009. Area E, which the Elgeyo would receive as a result of the above exchange, is part of L.O. No. 1869, a piece of unalienated Crown land surveyed for alienation as a farm. A suggestion has been made to us in evidence that the rest of this land, namely, 2,829 acres (the whole area being 3,958 acres), should be added to the Elgeyo Native Reserve in order to provide additional grazing. It is good pasture land and, in view of the needs of the Elgeyo in this respect and the fact that the Forest Department is moving a considerable number of them from the Lemibus Forest, we recommend that the suggestion be adopted, and that those 2,829 acres be added to the native reserve as Class B 1.

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1010. A small portion of this land may be required for exchange purposes in connexion with a proposed exchange between the Native Reserve and Messrs. Taylor and Wallis' farm, the object of which would be to secure a more convenient boundary. This matter is covered in the Secretary's précis, and a sketch map is provided at page 1938 of the Evidence.

1011. The Elgeyo claim that the country in the vicinity of Lake Sergoit has always been theirs and they ask for permanent access to the lake itself.

(4) Claim to access to Lake Sergoit and Grazing in the vicinity.

The District Commissioner writes :—

"The boundary is gazetted thus : . . . to a cairn in the vicinity of the most eastern point of Lake Sergoit, thence by a straight line due west to low-water mark on the shore of that lake, thence northerly by that low-water mark and the eastern bank of the Arobukutch River to its intersection with the southern boundary of L.O. 876."

1012. It can safely be presumed that when Government gave the Elgeyo access to Lake Sergoit it did so with a view to affording the tribe and its stock a constant water supply, which is badly required as there are no other sources in the vicinity. The lake sometimes dries up and then no water remains apart from a few springs in the south-west corner.

1013. The evidence of Mr. A. C. Hoey, who was the first European to visit these parts, is of interest on this point. He states that before the advent of Government the Elgeyo were confined to the forest and did not use this land. He adds (Evidence, p. 1998) :—

"At the time the Europeans came the first sign of stock was a few going on to the Sergoit side of the forest with a very strong body of Moran to guard them, and eventually the movement got bigger and extended into the Plateau and they watered at Sergoit Lake, but the whole of that country was unoccupied because it was unsafe for any natives to be there with their cattle."

The danger was presumably from bands of Nandi and Karamojong marauders.

1014. It would therefore appear that since Government came the Elgeyo have watered their stock at Lake Sergoit, and to this extent their claim is admitted.

1015. The springs are in a veterinary reserve, and the Chief Veterinary Officer gives us his assurance that there is an understanding that in times of drought the natives should be allowed to

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use this water, and that the necessary arrangements would be made. In view of this assurance we do not consider it necessary to recommend any alteration of boundary in this part.

The
Cherangani
Claim.

1016. The Cherangani are the northern section of the Marakwet. They claim an area of surveyed farms, some alienated and some still unalienated, in the vicinity of the Kaption salt-lick. They advance two reasons:—

- (1) That the land under consideration was occupied by them before the advent of Government.
- (2) That without more level land at a lower altitude it is difficult for them to make headway as agriculturists.

1017. The evidence is that at one time the Cherangani natives were forest-dwellers who did not own stock, and cultivated only on a small scale. When Government became established, administrative officers did their utmost to persuade them to forsake the forests and take to stock-owning and cultivating. When they acquired stock, they were allowed to live on alienated farms, and used the Kaption salt-lick.

1018. The Cherangani have some claim on the ground of long user, and the land is fortunately for the most part unalienated.

1019. Having heard the evidence of Mr. A. C. Hoey and the Provincial Commissioner and having ourselves visited the land in question we have formed the opinion, with which the Provincial Commissioner agrees, that neither on grounds of right nor on economic grounds are the natives entitled to quite so large an addition of territory in this neighbourhood as Mr. Hoey has suggested. It may be stated with confidence that some of the estimates of the economic position of the Marakwet and the state of their country, which are on record in official files and have been brought to our notice, are unduly pessimistic.

1020. We recommend that the lands enclosed within the following boundary and comprising approximately 12 square miles be added to the reserve as Class B 1.

From the northern beacon on L.O. No. 2202 westerly to the easternmost beacon on L.O. 2213; thence by the western boundary of farm L.O. No. 2202, L.O. No. 3043 and L.O. No. 2204 to the easternmost point of L.O. No. 6678; thence in a general southerly direction to include the Kaption salt-lick; thence southerly to the northern boundary of L.O. No. 2222; thence easterly by that boundary to the north-western corner of L.O. 2225; thence by the northern boundary of that farm to the western boundary of L.O. No. 3047 and 2210; thence

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northerly by the boundaries of these farms to the present reserve boundary; thence by the reserve boundary to the point of departure.

All the land so added to the reserve is unalienated Crown land; the position is shown on the map which follows this chapter.

1021. The Kibuswa and Kapchemutwa Locations comprise the southern location of the Marakwet Reserve and the northern location of Elgeyo.

Claim for
Grazing by
Natives of the
Kibuswa and
Kapchemutwa
Locations.

The natives claim that their old boundary ran as far west as the Moiben river, and included the area between the river and the present reserve boundary. They allege that they have lost a considerable amount of grazing land east of the Moiben river owing to the alienation of land as farms and also to the creation of the Elgeyo Native Forest Reserve. They are prepared to waive the latter part of the claim because of the revenues which the Local Native Council receives on account of timber royalties, but they claim the land alienated as farms.

1022. Arap Kamussein, a native witness, informs us that they used to occupy this land east of the Moiben, but were driven out by the Karamojong raiders about 1875. Mr. Hoey, who hunted a great deal over it from 1906 onwards, states there were no natives resident there, but gives evidence of having met Karamojong raiders (Evidence, p. 1994).

1023. Mr. W. P. Law, who has had a farm in this neighbourhood since 1919 stated (Evidence, p. 1982):—

“ . . . A matter of twelve or fourteen years ago there were no Elgeyo natives or Marakwet natives on the south side of the Cherangani Hills at all. There was a chief called Cheplalam and he lived actually in the forest, being the furthest out Elgeyo chief in the area. In those days there were Masai roaming about in the vicinity of Mr. Ridley's farm.”

1024. It is possible that there may have been some hardship caused by the alienation of land in the vicinity, but in view of the evidence which we heard from Mr. Hoey and Mr. Law, we consider that it is most unlikely that this was so.

1025. A claim has been made by the Marakwet to an area of approximately 100 square miles of their reserve the use of which has, by a local agreement between the District Officers concerned, been given to the West Suk.

Claim re
Marakwet-Suk
Boundary.

1026. In point of fact, the external boundaries only of the West Suk and Marakwet Native Reserves have been gazetted, and therefore this boundary is a matter for internal adjustment, and

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does not come within our terms of reference, but if it had done so, we should have been quite satisfied as to the justice of the arrangement.

The extent of the Relief afforded.

1027. The extent of the relief afforded by these recommendations is that the Elgeyo and Marakwet between them gain approximately $24\frac{1}{4}$ square miles of grazing land, while about $7\frac{3}{4}$ square miles of forest land are surrendered. A map illustrating these extensions appears at the end of this chapter.

Recommendation regarding a Combination of certain Reserves.

1028. Apart from these recommendations with regard to extensions, we consider that these tribes can do much to help each other by methods of peaceful interpenetration. Among kindred peoples such as the Elgeyo, Marakwet, East Suk, West Suk, Njemps and Kamasia, friendly arrangements between tribes, groups and individuals should not be difficult. With the political side of administration our Report is not concerned, but in respect of land administration we consider that the creation of small mutually exclusive reserves, where racial considerations do not require them, is probably a mistake: Where the custom of a tribe admits of members of other tribes or groups coming in as tenants we consider that so great an aid to fluidity and ease of distribution should be encouraged. We are inclined to think that the gazettement of small reserves operates in a contrary direction. While there is possibly no intention that the boundaries should be interpreted as barriers against a reasonable degree of peaceful penetration they have, in practice, a restrictive effect. We believe that it would be to the advantage of this group of tribes (named above) that they should share a common reserve, the internal boundaries between them being a matter of administrative determination. We treat this subject in more detail in Part III of our Report, but we desire to state in this place that we consider that a free movement between these tribes would promote friendly relations between them and lead to a more economic distribution.

1029. We recommend that there be one reserve for all these tribes.

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(b) THE NANDI AND THE EL GONYI.

1030. We shall first discuss the Nandi. Their economic condition may be useful as a prelude to the discussion of their claims.

The Economic Condition of the Nandi.

1031. The total area of the Nandi Native Reserve is approximately 757 square miles. This includes one square mile reserved for a township and sixty square miles of land either alienated or set aside for alienation (i.e. the Kipkarren farms and the Kaimosi farms, respectively $43\frac{1}{2}$ square miles and $16\frac{1}{2}$ square miles). The remainder of the land is in native occupation and amounts to 696 square miles.

The area of the Nandi Native Reserve.

1032. The total population is estimated to be 42,933, according to the Chief Native Commissioner's figures for 1932. The density of population on the land devoted to native use is therefore approximately 62 to the square mile. There are, however, some 7,911 Nandi living as squatters on alienated land; if these natives were returned to the reserve the density would then become 73 to the square mile.

Density of the Population.

1033. The Nandi, although primarily a pastoral tribe, practise agriculture on a small scale. No figures are available to show the extent of their production but we are informed that appreciable quantities of maize, millet, sweet potatoes, beans and pumpkins are produced. A few natives possess ox-ploughs, but the general mass of the people are opposed to the use of oxen for this purpose.

Agricultural Development in Nandi.

1034. It is estimated that the total number of stock in the reserve is approximately 150,000 head of cattle and 160,000 sheep and goats. The District Commissioner in his original memorandum gave a greater number of cattle, but in a subsequent letter he pointed out that, since the visit of the Commission, inoculation against pleuro-pneumonia has been in progress, and from the figures of cattle inoculated he considers his original estimate should be reduced to the number shown above. It follows from the population return that the average number of stock owned by a family of five is eighteen head of cattle and nineteen sheep and goats, if these estimates are correct.

Number of Stock owned by the Nandi.

1035. But the question of squatter stock has to be considered. According to the Agricultural Census, 1932, the number of stock owned by squatters in the Nzoia Province, amounts to 113,926 cattle and 104,669 sheep and goats. The large majority of squatters in this province are Nandi and the District Commissioner considers that the stock included in this figure but owned by other tribes is

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counterbalanced by the Nandi squatter stock in other districts. If this stock were returned to the reserve, with their owners, the average number of stock owned by each family would become 26 head of cattle and 26 sheep and goats, which we consider to be in excess of their requirements.

Acreage
available for
Stock.

1036. We shall now examine how far the reserve can be said to be over-stocked. The actual area available, exclusive of forest, for each head of cattle is approximately 2.97 acres, but this figure does not take into account land which is used for agricultural purposes and for pasturing sheep and goats, or land which may not be suitable for grazing. If all the squatter cattle were returned to the reserve, the acreage available would be reduced to 1.31 per head of cattle.

1037. Out of the 696 square miles of land "in native occupation" the District Commissioner tells us that 156 square miles are under forest, leaving no more than 540 square miles to accommodate the cattle, even if no deduction be made for homesteads and for cultivated land. This would mean, if the estimate of cattle is correct, that the land is at present carrying approximately one head to every $2\frac{1}{4}$ acres. This tends to show the high carrying capacity of the land, as we have it in evidence that the amount of grazing available is considerably diminished by grass fires which are started by the natives in order to burn the coarse grass, which would not be the case if the land were stocked to its full capacity.

1038. The general condition of the beasts is good, the milk yield satisfactory, and there are few, if any, signs of erosion due to over-stocking. This indicates that the reserve is able to carry the present quantity of stock, but clearly, on the return of large numbers of squatter stock, culling and other improved methods of animal husbandry will become necessary.

1039. The evidence of Mr. H. C. Guy, Stock Inspector at Kapsabet, is interesting. He is of opinion that the Nandi country can support one head of cattle to three acres, and that with careful usage even less than three acres might suffice.

1040. The Nandi has shown himself to be, by comparison with other natives, an intelligent stock farmer and, as the grazing is excellent and the quality of the cattle good, his future would appear to lie primarily on pastoral lines. But the reserve contains some of the best agricultural land in the Colony, and it is clear that better economic results will be secured by the development of mixed farming than by simple reliance on stock-raising and, apart from other considerations, growth of population will compel the adoption of this method. But every effort should be made to preserve the pasture and improve the quality of the native stock.

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1041. Regard being had to the nature of the country a population density of only sixty-two to the square mile must be considered low and, if better agricultural and pastoral methods are taught, it seems probable that, as in Kikuyu, a population of the order of three hundred to the square mile could comfortably be supported. The existence in the Nandi Native Reserve of 156 square miles of forest, which is not protected forest, is an indication, if one were needed, that the natives are not pressed for land, and problems arising from density of population are not likely to arise for many years to come.

Capacity of
the Land to
support a
Large
Population.

1042. There does not appear to be any clearly defined system of land tenure amongst the Nandi, and, according to the memoranda which have been submitted, there would not appear to be any proprietary rights in land, except possibly in Aldai. We did not find it necessary to inquire closely into the subject, and consequently do not commit ourselves to any definite opinion. An interesting memorandum was submitted by Major W. G. B. Huntingford, to which we invite attention (Evidence, pp. 2045 to 2061).

Land Tenure
among the
Nandi.

1043. The Nandi are reasonably well situated in respect of markets both for their produce and their labour supply, while the experience gained by working on neighbouring farms has contributed substantially to the advancement of the tribe.

Markets for
Produce.

1044. A point which should be mentioned is that the reserve has been in quarantine for some years, and the Nandi have therefore been somewhat hampered in selling their surplus stock. It is desirable that early action should be taken to facilitate the movement of cattle, either by stock routes or otherwise.

1045. We have offered the above short survey of economic conditions in order to afford a background against which the claims of the tribe in respect of land may be studied. We shall now proceed to a detailed examination of the claims.

Examination
of Land
Claims.

1047. The boundary of the Nandi Native Reserve was originally defined in 1907. the proclamation referring to it "as accepted by the chiefs of the tribe at the close of the punitive operations in 1906." It was subsequently found that some of the land included had already been leased before the reserve was proclaimed, and revised boundaries were gazetted in 1910 after the agreement of the Nandi chiefs had been obtained. The area enclosed by these revised boundaries was some 70 square miles larger than that defined in 1907.

Nandi Claim
to Kipkarren
and Kaimosi
Farms.

1048. The Kipkarren and Kaimosi farm areas were included in the native reserve boundaries both in the proclamation of 1907 and the proclamation of 1910.

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1049. In the Nandi Political Record Book the following entry appears under the date of November, 1907: "Deputation of Nandi elders informed that the land is theirs for ever." There is reason to believe that this assurance was given on the occasion when the Right Honourable W. S. Winston Churchill visited the Nandi tribe as Under-Secretary of State for the Colonies.

1050. In respect of the revision of boundaries in 1910 the Deputy Director of Surveys in his letter C/664 of 20th September, 1910, wrote: "Will you kindly supply me with information as to the boundaries of the Nandi Reserve according to the Treaty entered into by the British Government and the chiefs and elders concerned?" The Secretariat in reply furnished the required information, and made no comment on the wording of the Deputy Director's letter.

1051. From these quotations and from other information contained in official records it is clear that these agreements with the Nandi were of a particularly formal character, and were in the nature of a pledge given to the tribe.

1052. For some reason which is not fully explained the existence of the agreement appears to have been overlooked. In July, 1912, Government approved of the alienation of $17\frac{1}{2}$ square miles in the Kaimosi area, which was included in the Nandi Native Reserve both by the agreement of 1907 and the agreement of 1910. The extent of this land, which is now alienated as farms, is approximately $16\frac{1}{2}$ square miles, and the remainder has reverted to native occupation.

1053. In 1919, the existence of the agreement still being overlooked, the Chief Native Commissioner informed the Governor that a hundred square miles of Nandi Native Reserve could be alienated for Soldier Settlement farms, there being ample room in the remaining part of the reserve to accommodate the whole of the Nandi tribe. As a result of this recommendation $129\frac{1}{2}$ square miles of land in the Kipkarren area were surveyed into farms; allotment proceeded under the Soldier Settlement Scheme, and a number of farms were alienated on 999 year leases. Compensation at the rate of Rs. 50 a hut was paid to all natives disturbed.

1054. Shortly after alienation had begun, it was realized that such action was not in accordance with the undertaking of 1910, and also that so large an area could not be taken out of the reserve without hardship to the Nandi.

1055. In an effort to reach a settlement fair to all existing interests in the Kipkarren area a line was fixed, generally known as the Cogle Line, which had the effect of returning the greater part of the land to the Nandi for all purposes, leaving $43\frac{1}{2}$ square miles

The Cogle
Line.

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in the farm block. By a small subsequent modification a further 370 acres were returned to the Nandi, in order that they might have the Ngoroin salt-lick.

1056. While the whole of the land to the west of the Cogle Line reverted to the Nandi for all purposes, it was ordered under instructions issued by the Secretary of State that the farm block to the east of the line, both alienated and unalienated land, should continue to be regarded as an integral part of the reserve; that all rents or similar proceeds derived from alienation must be expended for the benefit of the Nandi; and that no further alienation in this area was to be permitted without the approval of the Secretary of State.

1057. The present position is that the Kipkarren block (as amended by the Cogle Line and the Ngoroin adjustment and one other small adjustment involving about ten acres) contains about $43\frac{1}{2}$ square miles, of which $33\frac{1}{2}$ square miles have been alienated. The Kaimosi block contains $16\frac{1}{2}$ square miles, all alienated. The total of land withdrawn from native occupation by reason of these farms is therefore about sixty square miles.

The Total
Extent of the
Land Lost.

1058. When the Kipkarren farms were alienated, compensation at Rs. 50 a hut was paid to all natives disturbed; the total disbursement was £2,485, representing a total disturbance of 497 huts and approximately 1,500 natives. The Kaimosi block was virtually uninhabited, and there is no record of any compensation paid.

The
Compensation
received for
Disturbance.

1059. All rents received on the Kipkarren farms and all rents received on the Kaimosi farms from 1923 onwards have been paid to the Nandi Local Native Council. This arrangement had the approval of the Secretary of State, and we may take it that the reason was, in the first place, that no Native Council existed before then, and in the second, that Government had spent the rents on improvements in the area concerned, although they were not specially earmarked for that purpose. We find nothing to be due to the Nandi in respect of the rents paid before 1923 and since that date the rents have been paid to them annually. There is therefore no cause of complaint in respect of rents.

Receipts by
way of Rent.

1060. In the case of Kipkarren the farms were alienated under the Soldier Settlement Scheme and were of two classes, A and B.

Receipts by
way of Stand
Premia.

In the case of all class B farms and syndicate farms a stand premium of £1 an acre was fixed but was afterwards waived. The total acreage of such farms alienated was 11,245.

Class A farms were allotted without sale. The total of them was 8,795 acres; they were in no way inferior and were perhaps

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slightly superior to the B farms; and if a charge had been made, the assessment for stand premia would probably have been £1 or perhaps a little more per acre.

About 1924 two farms totalling 713 acres were alienated and the proceeds, totalling £1,200-10-0, were paid to the Nandi Local Native Council. And in 1925 certain extensions to existing farms amounting to 653 acres were granted for sums totalling £556-15-0 and payable in ten annual instalments, which are handed to the Nandi Local Native Council as they accrue.

In the case of Kaimosi two farms were alienated in 1913 and stand premia amounting to £430 were paid to Government. Sixteen farms were alienated under the Soldier Settlement Scheme of 1921 but the stand premia, which would have amounted to £12,250 on the whole of them, were waived. In 1925 one other farm was alienated and in that case the stand premium was £1,050 which is being paid by ten annual instalments, which are handed over to the Nandi Local Native Council as they accrue.

1061. The addition of the foregoing figures is £35,527, and might suggest that if Government had fixed stand premia on all the farms, including the "A" farms, and if it had insisted on payment, and had paid the sums received to the Nandi, then that is the sum which the Nandi would have received. Mr. G. V. Maxwell, the Chief Native Commissioner in 1921, did in fact advance an argument of this kind and claimed for the Nandi the full amount of the stand premia assessed on this basis.

1062. Although we agree that the whole circumstances are most unfortunate and that every consideration is due to the Nandi, we are satisfied that the reason for waiving the stand premia was the inability of Government to collect them, and there is no doubt but that, at the time when the farms were alienated, there was a general impression that they were more valuable than they were subsequently found to be. Unless the charges had been waived or very substantially reduced, a large proportion of the farms would have had to be surrendered. Therefore, even if we accept the principle that the whole of the stand premia were due to the Nandi and should not have been waived without compensation, the amount due would be very much less than the total which the bare figures would suggest.

1063. The evidence as to compensation paid for disturbance suggests that there were only some five hundred huts on the whole 129 square miles originally surveyed for the Kipkarren farms, and although there may have been some families who moved without claiming compensation, it is clear that habitation was extremely sparse and that the only real use which the Nandi made of the land

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was as occasional pasture for cattle. As for the Kaimosi area we should never have supposed, apart from the Agreement, that it was Nandi country at all; or indeed that any tribe could have exercised any permanent rights there, since it was in the nature of a buffer zone between the Kavirondo and the Nandi.

1064. The evidence given to us by representatives of the Nandi at Kapsabet shows that, while they regard the question of the Kipkarren farms as their one serious grievance, they are more concerned with the loss of certain salt-licks than with any other aspect of the matter. The following are extracts from the Evidence (Evidence, pp. 2074, 2075 and 2077).

Evidence given
by the Nandi.

Arap Chepkigen : "At the time of the fighting the Government told us this was our boundary : The Europeans will be on that side of it and you will be on the other side of it . . . The boundary has been pushed back until it no longer tallies with what we were shown before.' "

Arap Chemoi : "Where the Europeans are living up on the farms used to be our land. We do not mind about that, but we would like to have the salt-lick called Kikombwot. There is another *shamba* called Kimong that we claim. We want the salt-lick called Kapkenerei."

Arap Koko : "I agree we always kept to the forest and we do not claim that we ever occupied the open plains . . . I am prepared to admit that the grazing lands out in the direction of Alessos were not ours at all. We have no very real complaint to make except in regard to Kipkarren."

1065. In view of all these circumstances we do not consider that the true loss to the Nandi was anything like as great as would appear. Taking into consideration the fact that they have been compensated to the extent of £2,485 for disturbance and are receiving stand premia to the total amount of £2,807 and rents amounting annually to £310, we consider that the Nandi would be adequately compensated by a payment of £5,000 as a comprehensive compensation for the extent of the loss suffered by them through the transactions which we have described.

Recommendation
regarding
Compensation.

1066. The position in regard to rents should remain unchanged and the Local Native Council should continue to receive them as before; also the remaining instalments of stand premia which are now being paid to them by instalments; also any stand premia or rents which may accrue from further leases of land in the Kaimosi and Kipkarren blocks. But the payment of the £5,000 should be deemed to include the satisfaction of any claim in respect of the £430 received by Government as stand premia for the two farms alienated in 1913.

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1067. We recommend that the compensating payment of £5,000 be made by instalments, and be regarded as a loan made by the Nandi to Government, bearing interest as from the date of this Report but not previously, and that the repayment of the loan with interest and amortization be carried out on the same basis as if it were a loan borrowed from the Kenya Land Bank.

Recommendation for a Modification of the Cogle Line.

1068. We recommend a modification of the Cogle Line by a new line to be drawn as follows:—

“Starting at the north-east corner of L.O. No. 4363; thence westerly along the northern boundary to its north-western beacon; thence northerly to the north-eastern corner of L.O. No. 6960; thence westerly along its northern boundary to the Cogle Line; then along the Cogle Line to the south-western corner of L.O. No. 6958; thence northerly to the south-western corner of L.O. No. 3160 so as to include the Kapkeneroi salt-lick; thence northerly along the boundary of L.O. No. 3160 and 3159 to the southernmost corner of L.O. No. 6957; thence north-westerly along the southern boundary of L.O. No. 6957 to the Cogle Line; thence along the Cogle Line (as amended) to Ngengilil salt-lick so as to include that salt-lick in the reserve; thence in a northerly direction along the dry water course to the present boundary of the reserve.”

This recommendation, as illustrated in the map following this page, would have the effect of restoring three square miles to native use together with valuable salt-licks. It would involve the acquisition of three farms in the south-west corner of the allotment, but the remainder of the farms are unalienated. Two of the three farms belong to one owner, who is willing to exchange them for land of equal value in the block marked Sarora, while the owner of the third farm has expressed his readiness to exchange it for unalienated Crown land in the North Nyeri District.

1069. There is a salt-lick on L.O. No. 3147 with regard to which we have seen the owner, Mr. R. L. Nestor, since it seemed possible that an exchange of land could be arranged by which the Nandi could obtain the salt-lick. But on investigation we found that the suggestion advanced by the District Commissioner (Evidence, pp. 2078-2079) would not have effected its purpose, and it appears that he had been misinformed as to the position of the salt-lick. For this reason we make no recommendation, but if a satisfactory exchange could be subsequently arranged, it could be effected under the provision for exchanges which we shall recommend in the third part of our Report (sections 1474 and 1475 below).

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1070. Our third recommendation is that, when the boundary of the Kipkarren farm area has been amended, the unalienated land inside it should be available for alienation to Europeans.

Our reason for this recommendation is that we think that the amendment of the line in the manner proposed will fulfil the requirements of the Nandi, and we consider that native as well as non-native interests will be served by the alienation of the remainder of the block. From the point of view of the Europeans the Kipkarren block, though reduced in size to 62 square miles, would become a consolidated block of settlement, and with the elimination of islands of unalienated lands, a possible source of friction between native and non-native would be removed. From the point of view of the natives, the existence of this block of farms on land which is in excess of their present requirements is an economic asset not only because of the rents, but also because of the employment provided. It can scarcely be denied that the presence of this comparatively small block of European settlement will exert an educational effect which will be of great benefit to the Nandi in the development of their country.

1071. We have endeavoured to make proposals which are just to all existing interests, and we believe that we have done so. But since in a matter of this kind fair-minded men may differ as to what should be done, we consider that a few supplementary observations are required, in order that our reasons may be made quite clear.

Comments
upon the
Justice of the
Recommendations.

1072. Critics of our recommendations will probably be of two classes, those who think them too generous to the Nandi and those who think them not generous enough. To the former class it may appear, that since the Nandi themselves have never raised the question of stand premia, it was not necessary for us to deal with it. To them we reply that the natives are in the position of wards of Government, and therefore it would not have been right if the issue had not been raised on their behalf, and it is a point with which we were clearly bound to deal.

1073. On the other side we may anticipate criticism to the effect that the agreement made with the Nandi in 1910 ought to be honoured in the letter. This criticism merits a detailed reply :—

- (1) In the first place the matters under complaint are twelve years old, and other parties besides the Nandi have acquired rights which are equally entitled to respect. We do not consider that grievances of long standing can be put right simply by a setting back of the clock and restoring the *status quo ante*. Such a return, if it were possible, would not in our opinion be to the advantage of the Nandi.

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- (2) We do not find the agreement of 1907 or the subsequent agreement of 1910 to have been treaties. The first of these agreements was made after the Nandi rebellion, but it was in no sense a term or condition of peace. It was a definition of the land which the Nandi tribe should inhabit as a reserve, and there is evidence that a promise was given that the land should be theirs "for ever." But there was no consideration on the other side, and we cannot subscribe to the view that Government should never depart from such an agreement in any circumstances. But in equity towards the Nandi there should be no departure which is to their disadvantage, or, if there is such a departure, compensation is due.
- (3) We consider that the original alienations were to the disadvantage of the Nandi in that too much land was alienated, and valuable salt-licks were taken from them. But the amendment made by the Cogle Line substantially reduced the grievance and the further reduction which we have proposed, together with the return of further salt-licks, should remove it altogether. We consider the leasing of the remainder of the land to Europeans to be economically to the benefit of the Nandi, not only because of the financial profits which they will receive in rent and stand premia, but also because of the employment provided and the advancement in agricultural and pastoral skill which is to be expected as a consequence. We are satisfied that there is ample room in the Nandi Native Reserve for its present population and any increase to be expected for generations to come.

These are considerations which would have justified the Land Board in recommending the granting of leases, if the Lands Trust Ordinance had been in operation at that time.

- (4) On the other hand it is a principle of the Lands Trust Ordinance that leases to non-natives should generally be for short terms. They are limited to thirty-three years, except that in special cases leases for 99 years may be issued, subject to the approval of the Secretary of State. The reason for this provision is clearly that, while it is possible to say that for a period of thirty-three years or possibly for ninety-nine years a particular piece of land is not likely to be required for the maintenance and support of the natives, it is impossible to say that for 999 years the land will not be required.

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1074. For these reasons we consider that 999 year leases ought not to have been issued, and we have given consideration to the question whether we should recommend that negotiations be opened with the lessees for converting them to 99 year leases in return for compensation for the difference in value. But the balance of argument is against this course. We do not think that it would be likely to prove of any substantial benefit to the Nandi or that they would be any better off in respect of any negotiations which may arise many years hence. On the other hand the loss of public confidence which would undoubtedly result from so unusual a conversion would have an unfortunate effect on the economic position of the country. A principal object of this Commission is to provide a stable land policy, and, although we think that leases for a shorter term would have been preferable, we are firmly of the opinion that any attempt to alter them at this date would be unwise, and we cannot recommend it.

1075. Farm L.O. No. 1371 (2914 acres) forms a triangle across the Mukong River; the Nandi ask that the boundary be adjusted so that the river should be the boundary. The natives claim that this triangle was in fact purchased from the owner some years ago for a hundred head of cattle, but we have been unable to obtain any further evidence in the matter.

The Nandi
Boundary in
the South-
East.

The District Commissioner considers it desirable that this adjustment should be made if in any way possible, and points out that the Mukong River has a considerable volume of water in it and for nine months in each year is not fordable. We recommend that Government should investigate the possibilities of effecting this adjustment.

1076. We now turn to the examination of the land problems of another tribe of the Nzoia Province, namely, the El Gonyi. This tribe, which is also called the Elgoni or Konyi, appears to be of pure Dorobo stock and in the opinion of the District Commissioner, Kitale, is descended from the original Serikwa. They are related to the Uasin Gishu Masai, who are said to be of the same origin. Mr. Cardale Luck says the El Gonyi headman, Arap Kasisi, belongs to a group of Dorobo of whom the Uasin Gishu were a part.

Land Problems
of the El
Gonyi.

According to Arap Kasisi, the El Gonyi were raided several times by the Masai at the time when the Uasin Gishu Masai were annihilated by other sections of the tribe; they also suffered severely at the hands of the Nandi and Karamojong. As the result of these wars and raids, many of the El Gonyi fled into Malakisi and Kitosh in the North Kavirondo District, and others remained on Elgon Mountain. In Mr. Cardale Luck's opinion the El Gonyi are a dying race.

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The Country
they Claim to
have Occupied.

1077. The El Gonyi claim to have occupied the neighbourhood of Mount Elgon and to have extended as far as Moiben, Kapenguria and the Cherangani hills, with Kitale as a centre, but we have the evidence of Mr. Scally that when the European farms in the Trans Nzoia were surveyed, they were living above the line of the farms on the slopes of Mount Elgon, and that none of them was dispossessed when the alienations took place.

Mr. Cardale Luck says that Arap Kasisi and his people have owned Mount Elgon for thousands of years, and, when the Protectorate was declared in 1895, there is no reason to suppose they inhabited any other part of the country, although it is probable they occupied a much larger area jointly with the Uasin Gishu Masai before the latter were annihilated.

In view of all the circumstances, we do not consider that any claim to land beyond the mountain region need be considered.

The Country
they now
Occupy.

1078. The El Gonyi are now reported to be living in the following areas:—

- (1) On farms in the Mount Elgon region of the Kitale District.
- (2) On the moorlands above the forest belt on Mount Elgon.
- (3) In the Kitosh Location of the North Kavirondo District.
- (4) In the Sabei country in Uganda.

Population.

1079. About 1,900 are reported to be in area (1), where they are squatters on European farms. About 700 are in area (2), where they are forest squatters. Half the tribe are said to be in area (3) under a North Kavirondo headman with a sub-headman of their own, and an unascertained number are in the Sabei country in Uganda. Apart from the latter area it would appear, therefore, that the total population of the El Gonyi in Kenya is approximately 5,200.

Stock.

1080. The El Gonyi are wealthy in cattle according to the figures given us in evidence. They are said to possess 13,000 and 5,600 respectively in areas (1) and (2), and if those in area (3) are relatively as wealthy, it would follow that they have in Kenya to-day a total of some 35,000 head. This would mean that they possess 7 cattle per head, or 35 per family unit of 5.

They do not appear to possess very large numbers of sheep and goats though we have no figures except in respect of area (2), where, according to the Assistant Conservator of Forests, Eldoret, they had 1,824 sheep in 1933, but no goats. They are not, however, permitted to keep goats in this area on account of the damage these animals are likely to do in the surrounding forest, but they probably have a considerable number elsewhere.

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The above figures, while open to criticism, are a sufficient indication of the wealth of the El Gonyi in live stock, and there is no doubt that their one idea is to amass as much as possible irrespective of their needs or of the capacity of the land at their disposal to carry it.

1081. It must be admitted that the El Gonyi have a strong claim to the mountain on historical grounds, but in view of their Dorobo origin, the use they had of it cannot have been very great, and it was probably used mainly for hunting and the collection of honey. But, unlike most of the Dorobo clans, they appear to have originally owned cattle which, however, they held very precariously owing to the raiding proclivities of their more powerful neighbours. They probably possess many more cattle at present than at any time during their previous history, and the problem before us is to consider how far their claims can be met in a reasonable and equitable manner. Part of the area they originally occupied is now comprised within the North Kavirondo District; a part has been alienated for European settlement; another part is now forest reserve, and the remainder is in the Uganda Protectorate. Colonel Watkins states in evidence that the El Gonyi move about in these areas and do as their headman, Arap Kasisi, does. Colonel Watkins says Arap Kasisi sometimes goes up the mountain, sometimes to Uganda, sometimes squats on a European farm, and wherever he goes he claims is the home of his ancestors.

Examination
of Land
Claims.

The El Gonyi desire a country of their own, but it is hardly possible to consider these claims to a vast area of country for the exclusive use of a small and possibly dying tribe.

1082. The policy of the administration is to move the El Gonyi off the farms, where they are an embarrassment to the European settlers and to Government, and where it is clearly not in their own interests that they should be permitted to remain.

The Alienated
Areas.

The District Commissioner has already persuaded a large number of them to move with their stock into Uganda, but doubts if the Uganda Government is willing to take any more. He states he has moved 200 families with about 5,000 head of cattle into Uganda, and that there are another 2,500 cattle ready to go, but prevented from doing so by quarantine restrictions. We have no information as to whether any more of the El Gonyi can be accommodated in Uganda.

1083. We are informed by the Conservator of Forests that 142 families of the El Gonyi are living on the moorlands above the forest belt on Mount Elgon, apparently in the position of forest squatters. This area is understood to include no forest and is not required or possible for afforestation, but the Conservator of Forests considers it necessary that his Department should have control

The Forest
Area on
Mount Elgon.

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over it in order to preserve the surrounding forest. There are widely divergent views as to the extent of the area. Of the various estimates before us we consider that made by the Conservator of Forests to be the most reliable. He estimates the area to be 40,000 acres, and produced a map in support of his statement. Of this total approximately 4,500 acres are in the Trans Nzoia District.

The greater part of the area is situate in the North Kavirondo District but a smaller part is in Trans Nzoia; it is all gazetted forest reserve.

The Conservator of Forests has taken measures to prevent over-stocking, and considers the present number of stock to be as many as the land can reasonably be expected to carry.

The El Gonyi are only permitted to reside and keep stock in the area with the authority of the Forest Department, and their cattle are required to be branded.

The Kitosh
Location.

1084. We have evidence that about half the El Gonyi are living in the Kitosh location in the North Kavirondo District under Chief Marunga, but with a sub-headman (Arap Tendetti) of their own. The Conservator of Forests considers there is abundant room there for any of the squatters who are moved off the farms, but the Provincial Commissioner, Nyanza, thought there might be some difficulty in accommodating all their cattle. The El Gonyi in this area are understood to be living in conjunction with the Uasin Gishu Masai.

The Uganda
Area.

1085. The only evidence in regard to the El Gonyi on the Uganda side of the border is that of the District Commissioner, Kitale, who stated that he had moved 200 families with about 5,000 head of cattle into the Sabei country. From this we deduce that the two tribes are closely related, and that Uganda is willing to accept such numbers of the El Gonyi as can be accommodated there.

Summary of
Position.

1086. With the possible exception of the alienated farms in the Kitale District, it does not appear that the El Gonyi have been dispossessed of any land to which they are in equity and justice entitled, but they have no country which they can call their own, unless the Sabei country comes within that category. Some are squatters on farms, some are forest squatters on the moorlands of Mount Elgon and others are merged in the North Kavirondo District with the Uasin Gishu Masai under a North Kavirondo headman.

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We have heard no complaints that the first group have not sufficient land for grazing, and for agriculture if they wish to cultivate, and the same applies to those in the Sabei country. We need therefore only concern ourselves with the El Gonyi on the Kitale farms and in the forest reserve on Mount Elgon.

1087. Our recommendations are as follows:—

Recommendations.

- (1) That the policy of the administration of moving the El Gonyi from the alienated farms should be continued unless they become squatters under the usual agreement, but that the question of compensation be considered.

We recommend that such of them as have resided in the farm area continuously for a period of three years or thereabouts shall receive compensation, and that all native rights reserved in the leases in respect of each area should thereafter be extinguished. The degree of disturbance among such a nomadic race would not be very great, and we consider the administration should decide what is fair compensation.

- (2) That the Uganda Government be approached on the question of accommodating more of the El Gonyi in its territory and, if they can be accepted, that those who are moved off the farms be given the option of going there or into the North Kavirondo District, or, if there is room for them, on to the moorlands of Mount Elgon.
- (3) That the moorland area, some 40,000 acres in Kenya above the forest belt on Mount Elgon be reserved for the use and occupation of the El Gonyi, and that the whole area be included in the Kavirondo Reserve as Class A land.

We consider the El Gonyi have a strong claim to this area on historical grounds, and that they are in equity entitled to the use of it. We do not think they should be in the position of registered squatters, who have to obtain special permission to reside there and who are liable to eviction.

We fully appreciate the arguments of the Conservator of Forests for retaining the area as Forest Reserve and consider it has been well managed, particularly in regard to the over-stocking question, under his supervision. But we cannot agree that so large an area of grazing land can properly be regarded as forest reserve, and in our opinion the surrounding forest, streams and springs can be equally well protected if it ceases to be

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forest reserve and becomes native reserve in the usual sense under the control of the Provincial Commissioner, who will have at his disposal the advice and assistance of the Conservator of Forests and his officers in all matters relating to the protection of the forest.

We see no reason why the Conservator of Forests should not, in practice, continue to exercise supervision over the area, subject to the general direction of the Provincial Commissioner, but its inclusion in the North Kavirondo Reserve for the use of the El Gonyi will give them security of tenure, an area which they desire and can call their own, and, in conjunction with our other recommendations, we consider their claims will have been adequately met.

CHAPTER XI.

THE NYANZA PROVINCE.

(a) THE ADEQUACY OF THE THREE KAVIRONDO RESERVES TO THE NEEDS OF THE OCCUPANT TRIBES.

1088. This and the following three chapters will be devoted to the land problems of the Nyanza Province. In the present chapter we shall discuss the question whether the Native Reserves of the three Kavirondo districts, comprising a total area of 7,114 square miles, are adequate to the needs of a population, estimated according to the Chief Native Commissioner's estimate dated 2nd June, 1933 to be 1,029,422 persons.

The Question
to be
Discussed.

1089. North Kavirondo is inhabited almost entirely by a number of closely allied tribes, who are usually known collectively as the Bantu Kavirondo. There is, however, a small colony of Luo, who are of Nilotic origin, in the locations of Buholo, Wanga, and South Marama. With the exception of the Samia location Central Kavirondo is almost entirely Luo; while in South Kavirondo the bulk of the population are either Luo or Kisii, the latter being a Bantu tribe inhabiting the highlands in the vicinity of the District headquarters. These tribes differ considerably in industry and attainments, but in the following short discussion of their economic position it will be necessary to generalize.

Some Account
of the
Inhabiting
Tribes.

1090. Very full economic surveys of the three Kavirondo districts have been prepared by Messrs. M. H. Grieve, Agricultural Officer, Kakamega, A. S. Hartley, Agricultural Officer, Central Kavirondo and Major C. E. V. Buxton, District Commissioner, South Kavirondo, and stand in evidence (Evidence, pp. 2206-2220, 2247-2260, 2348-2366). In addition to these surveys, statistics of population and density were prepared by Mr. R. F. Palethorpe at our request, while he was acting as our Assistant Secretary. These tables will also be found in the printed evidence.

Sources of
Information.

1091. The first point that strikes us is the very large population in these reserves. The position is that rather more than one-third of the total population of the Colony is inhabiting rather less than one-thirtieth part of its total area.

The Popula-
tion of the
Reserves.

1092. Large numbers of the Kavirondo, both Bantu and Nilotic, go out to work outside their reserve and the Chief Registrar of Natives informs us that the average number so employed amounted to 51,494 in 1931. In contradistinction to the Kikuyu and other tribes, they do not, in general, leave their reserve permanently, nor do they bring their families with them when they

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go out as labourers, while very few reside on non-native estates as squatters, so that the large majority of the 51,494 out at work still have active associations with their homes, and are included in the population figures.

The Rate of
Increase of the
Population.

1093. The rate of increase of population appears to vary considerably in the three districts, the final figures given by the Administrative Officers who have submitted memoranda being 0.8 per cent annually in Central Kavirondo, 1.2 per cent in North Kavirondo and 1.5 per cent in South Kavirondo, as against 1.6 per cent estimated for Kikuyu. The officers concerned make it quite clear that these figures can only be taken as approximate, but the ratios may be accepted as being reasonably accurate, for there has been a considerable migration of recent years from Central Kavirondo to South Kavirondo, which would account for the greater increase in the latter district and the small figure shown for the former.

Uneven
Distribution
of the
Population.

1094. The density of the population varies greatly from location to location, the peak being reached in Bunyore (North Kavirondo) where it is said to attain the abnormal figure of 1,140 per square mile.

1095. The soil in this region is exceedingly fertile, and presumably the natives realize that a small area under cultivation here will yield as much as a larger area elsewhere. But even if this is so, there are obvious dangers to health in a population with only an elementary knowledge of hygiene being congregated in so great a density, and a more even distribution should be encouraged. Fortunately there are large areas of cultivable, but not cultivated, land elsewhere in the district, and therefore it would seem, without entering into details of land tenure, that relief from congestion could be afforded by penetration into other locations where such land can be found.

Agriculture in
Kavirondo.

1096. The agricultural sections of the economic survey show us quite clearly that the people are definitely agricultural rather than pastoral, though possibly the tendency is in the opposite direction in Kitosh in North Kavirondo, Kano and Nyakatch in Central Kavirondo, and the Luo locations of South Kavirondo as a whole are definitely agricultural.

1097. There are two points in the surveys which strike us forcibly; first, the average yield per acre is extremely small, having regard to the quality of the land and the fact that a large part of it will yield at least two crops per annum; and secondly, the amount of produce sold per household is also small, amounting only to some Sh. 12 in North Kavirondo. These points are of considerable importance when considered in connexion with the

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land requirements of the prospective population, for they show that increased skill should enable the same land to support a very much larger population at a higher standard of life.

1098. We believe that the possibilities of obtaining increased yields per acre are very great. The details of the measures which should be adopted in order to improve present conditions scarcely come within our terms of reference, but are the concern of the Department of Agriculture. Tribes whose methods of agriculture have not greatly changed within living memory cannot be expected rapidly to assimilate new ideas, but the work of teaching must go on steadily and unceasingly, and it must always be borne in mind that better methods of cultivation are essential in order to conserve the resources of the soil.

Possibility of
Increased
Yields.

1099. We may presume that changing conditions will necessitate some capital expenditure on the part of the natives in order to obtain increased yields.

1100. In order that they may be in a position to meet such expenditure, it is necessary that their purchasing power—in other words, the available balance of the family budget—be increased. How can this increase of purchasing power be obtained?

1101. Two methods at once suggest themselves. An increased acreage can be planted and cash crops of an economic character can be encouraged. There is no doubt that there are many such crops well suited to Kavirondo. Any measures taken to stimulate production of cash crops will be especially valuable, and will contribute greatly to the revival of trade and the prosperity of the natives.

1102. At present the greatest source of income is the external labour market, and it is necessary to remember that the very meagre earnings of the natives by sale of produce are considerably augmented by the wages earned and remitted by the young men who leave the reserve to work for Europeans, and recently by the opening up of parts of the country to mining.

1103. Memoranda have been submitted to us by the District Commissioners of the three Kavirondo districts on the subject of land tenure. We have also read the report of the Committee appointed to inquire into the system of land tenure obtaining in North Kavirondo, and a memorandum by Mr. E. B. Hosking, District Officer, on the difficulties experienced in endeavouring to implement the recommendations of the Committee. We have in addition heard the evidence of a number of informed witnesses, both European and native (Evidence, pp. 2285-2288, 2292-2299, 2347, 2406, 2401).

Land Tenure
in Kavirondo.

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1104. It appears that land tenure in all the Kavirondo Districts is based on the clan system. The Luo, perhaps even more than other tribes, seem to experience a difficulty in distinguishing between the ownership of land and the possession of political power, and disputes about land boundaries are not so much concerned with the land itself as with the question of who is to be headman or ruler of a location or section; we had considerable difficulty in making them understand that we were not concerned with such matters.

1105. But the emergence of land problems, as such, and the development of a more private form of right-holding are to be expected, and signs of them are already apparent. From a perusal of the evidence and memoranda, we have formed the general view that the systems are sufficiently elastic in themselves to permit of a reasonable freedom of movement in the population, while spontaneous migrations from congested into less congested locations should in a large measure prevent any problems of local congestion from becoming acute. This view is shared by the Provincial Commissioner.

1106. Modifications in the system of tenure may be expected, to a large extent, to come about spontaneously as the native outlook accommodates itself to changing conditions, and it will be the task of the administrative officers to observe and sometimes to guide. There may also be occasions when it becomes necessary to regulate, and in the third part of our Report we shall consider the manner in which rules should be made.

1107. While we state our opinion that a gradual advance to a more private form of tenure is to be welcomed, and while elsewhere in our Report we mention some of the main difficulties which are likely to be encountered, the detailed study of the question is a task proper to the administrative officers on the spot. But we wish to lay stress on the fact that the question of land tenure is of fundamental importance for the development of the reserves, especially among the agricultural tribes.

Adequacy of
the Reserve .

1108. We must now attempt to answer the specific question to which our economic analysis is directed, namely, "Are the Kavirondo Reserves adequate for the present and future needs of the population?" The surveys submitted for our consideration show quite clearly that there are extensive tracts of arable land which have not yet been brought under cultivation. There are also large areas of swamp land and fly-infested country, of which no use is made. We anticipate that this land will in the future be brought into use by clearing of bush and draining of swamps.

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1109. The general opinion expressed by European witnesses, including administrative officers and missionaries, is that no extension of the reserves is necessary at present. We invite special attention to the evidence of the Provincial Commissioner and Archdeacon Owen. We accept this view and express the general conclusion that the Kavirondo Reserves are adequate for the needs of the natives.

1110. It is possible that in the more distant future there might be congestion, if general conditions, apart from population, remain as they are. But we are confident that the advance to be expected in agricultural skill and practice will improve at once the standard of life and the capacity of the reserve to carry a greater population. Although it appears that the rate of population increase is somewhat high, we do not apprehend that any problems are likely to arise in this connexion which cannot be solved by an internal distribution. We find no reason to believe that, within any period which it is necessary for us to contemplate, growth of population will outstrip the growing capacity of the country, when properly developed, to support the greater numbers.

CHAPTER XII.

THE NYANZA PROVINCE.

(b) CLAIMS OF RIGHT IN THE KAVIRONDO DISTRICTS.

The Specific
Claims of the
Kavirondo
Districts.

1111. We now proceed to the discussion of specific claims or grievances of the natives of the Kavirondo districts. The most striking thing about them is that they are so few and so comparatively unimportant. It is no small tribute to Government that these natives, whose numbers are more than a million, should have so little about which to complain.

1112. Nevertheless we derived the impression during our visit to Kavirondo that there is some feeling of unrest with regard to land. It is not well founded, except possibly in so far as the future of the gold-mining industry is concerned. But it cannot be ascribed entirely to this cause, and the feeling of uneasiness was equally apparent in Central Kavirondo, which has not been opened to prospecting. It is true that certain small areas of land have been acquired for Government, missionary and trading purposes, but almost every exclusion or alienation has been made in order that the natives themselves might reap the benefits.

Claim by the
Kanyakwar
Clan.

1113. The natives of the Kanyakwar clan (Luo) claim land in the Kisumu and Kano locations of Central Kavirondo and also in Kisumu township. In so far as this claim relates to the native reserve, it does not come within our terms of reference. It is a matter of internal adjustment which at present comes within the purview of the Lands Trust Board. We shall discuss the working of the ordinance and make recommendations thereon in Part III of the Report, and we need not concern ourselves further with the claim of the Kanyakwar, except in so far as Kisumu township is concerned.

Claim to
Kisumu
Township.

1114. In connexion with this claim, a memorandum by Mr. C. W. Hobley, who actually founded the Government station there, is of great interest. He writes :—

“When we established the first Kisumu station on the north side of the Kisumu inlet, we did so with the friendly acquiescence of the Kisumu group of tribesmen; no villages were removed, no *shambas* were occupied by our buildings or by the bazaar.”

“Later, however, the Chief Engineer (of the Railway) decided to make the terminus on the south side. This entailed the removal of the Government station to the same side as the railway terminus. I was therefore instructed about 1900 to lay out a township on the rocky ridge where Kisumu

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now stands. The ridge was covered with thorn bush, and I saw no trace whatever of human habitation, past or present . . . I once did hear a story that a very long time previously some natives had lived somewhere on that ridge, but they had all died of a deadly disease, said to be like plague."

1115. Evidence from Swahili who came to Kisumu even before the railway reached there bears out this statement.

1116. It therefore appears certain that there can be no sound claim to that part of the township which forms the rocky ridge overlooking Victoria Nyanza but it is possible that to some extent native rights existed in other parts of the township.

1117. The township boundaries were first gazetted in 1903, and comprised the circumference of a circle two and a half miles in radius, with its centre at the Collector's office. The total area, including water, was approximately 12,566 acres. This position obtained until 1923, when considerably modified boundaries were gazetted, reducing the area to 6,980 acres. This has been further modified, and the area is now 4,780 acres, including part of Kisumu Bay.

1118. This last modification frees an area of land of approximately 1,380 acres, which Government proposes to add to the Central Kavirondo Native Reserve, but has hitherto been precluded from adding because of the absence of the necessary legal machinery.

1119. Commenting on this proposal, the Provincial Commissioner in 1930 wrote :—

"I think it can safely be said that all land owned tribally by the Kavirondo will under the proposed scheme be excluded from the township and included in the reserve. Practically all the natives remaining in the now diminished township are immigrants from other locations."

1120. It is therefore likely that the native claims on grounds of right will be satisfied by this addition. But there is another factor which deserves consideration : Kisumu is the market through which most of the native produce from Kavirondo passes. Those natives who live near the township are adjacent to their market and consequently the township is of more benefit to them than to those living in more remote places. In addition they benefit from the considerable market for perishable goods such as eggs, milk, etc. which the township affords, and it is safe to assume that if any natives have been disturbed by the creation of the township, they have settled in the vicinity and are deriving advantage accordingly.

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1121. If these recommendations are implemented, we feel that the natives will have been treated not only justly, but generously. The particular claims of the Kanyakwar clan into which we have inquired at length appear to us to have no foundation sufficient to warrant us in pronouncing in their favour.

The Bantu
Claim to
Masana.

1122. The Bantu claim to Masana is, in effect, the expression of a desire that the Masana Valley should be included in the North Kavirondo Native Reserve, the natives of which are largely Bantu, the boundary between North and Central Kavirondo being adjusted accordingly. The natives have lost no land; they are at present living in a native reserve and there is no proposal that they should be moved. This claim is therefore purely an internal matter, and, except in so far as it involves the general question of the management and control of native lands, which is fully discussed in Part III, does not come within our purview.

Claim to
land formerly
alienated at
Maseno.

1123. There is an area of land of approximately 900 acres at Maseno near the boundary between North and Central Kavirondo which is claimed by the natives. It was alienated originally to a company in which missionaries were interested, called East African Industries Limited, and was ultimately bought back by Government in 1926. On its repurchase, it was not added to the reserve, but was used as a Government Social Service Centre. It now contains a Veterinary Training Centre, a Local Native Council seed farm, and a model village.

1124. The Provincial Commissioner remarks :—

“The land was originally claimed by natives of Bunyore (North Kavirondo) and Seme and Sagam (Central Kavirondo) and there must always have been disputes about it.”

1125. Some of the natives resident on the land were compensated by the company and left, while others were allowed to remain. These were removed on the acquisition of the land by Government and compensation was paid to them.

1126. It appears from the evidence of Mr. H. O. Savile, Manager of East African Industries, Ltd. since 1903, to be very doubtful whether any of these natives had occupied the land prior to the advent of the British Government.

1127. Whether the original alienation was a mistake or not is not now relevant; if it was, Government has rectified it and is using the area as a social service centre. The estate is now being used for the benefit of the natives, and those natives who are living in the immediate vicinity reap the greatest advantage. We therefore record our view that Government has fully met whatever native claims there may have been by the re-acquisition of the land, and by using it for the benefit of the natives themselves. We would suggest, however, that the land should be formally

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added to the reserve, and it can then be regarded as set apart for the purpose of a social service centre (*vide* Part III, sections 1523, 1526 and 1541).

1128. The Luo claim the land in Yala township as their own. This claim has two aspects, firstly, a general objection by the natives to the setting apart of the township area and, secondly, a particular objection to the utilization of part of that township for the purpose of a Roman Catholic mission school.

Claim by Luo
to Yala
Township.

1129. The general remarks we have made concerning trade and townships in our discussion of Kisumu township apply with equal force here. Yala township is a prosperous centre of trade in the middle of an intensely cultivated and fertile area and it is of great benefit to the natives to have this ready market. The proximity of the goldfields is bringing increased prosperity.

1130. Again, the erection of a large mission school is also of considerable benefit to the local natives; indeed, that is its sole object. It is recorded that compensation has been paid to any natives residing on the township land which was alienated to the mission, and we therefore cannot admit that their claim is reasonable. No real hardship has been suffered and considerable advantages have accrued to the natives. The land has not been excluded from the native reserve.

1131. The natives claim three Indian farms at Kibos where it is alleged there were in the past some 37 native *bomas*, and they also represent that some 60 villages were moved from Indian farms near Miwani and about 40 villages from Mr. Ney's farm at Kibigori. All this land is north of the railway.

Claim to
Estates North
of the Railway
between
Kisumu and
Muhoroni.

1132. The Rev. H. W. Innis, who has been a missionary in Kavirondo country since 1906, informs us that at that time there were no natives between the railway and the Nandi Escarpment, which was a neutral zone into which both Nandi and Luo were afraid to enter. This is borne out to some extent by Mr. Jairo Owino Omondi, a native witness who has been in Government service in Kisumu since 1899. He states that the Luo used to move into the area when the Nandi were inactive, but as soon as there were any hostilities they promptly retreated south of the railway.

1133. There is definite evidence that the railway was made the modern boundary and that any natives who had come to live north of the line were moved back in order to make way for the Indian farms which were made available for alienation in 1903.

1134. The fact appears to be that this land was a neutral zone between Nandi and Kavirondo; accordingly we find that the natives have no good claim to it.

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Claim to
Maxwell's
Farm (L.O.
653).

1135. An application was submitted in July, 1906, by the British East African Corporation for 2,270 acres for cotton growing, and for the economic education of the natives, and in 1907 permission to occupy, pending survey, was granted. The Provincial Commissioner protested on the ground that the land was already, as to the greater part, in the occupation of the natives. After some negotiations it was decided that, on account of native rights, only some 473 acres could be taken up. This area was subsequently conveyed to Mr. James Maxwell, the present holder.

1136. An examination of the records at Kisumu reveals that great trouble was taken to ascertain the extent of native occupation on the land and to exclude it from the area granted, and it is significant that the land finally conveyed was only about a fifth part of the land for which application had been made. We conclude therefore that no substantial rights of individual natives obtained in that part. Rent is paid to the Central Kavirondo Local Native Council, and we consider that no further action by Government is necessary in respect of this land. But because the farm is an island in the native reserve, we recommend that, if it should come into the market, the Local Native Council or any body of Luo or an individual Luo should be permitted to bid for it, equally with non-natives.

Claim to a
Mill Plot on
Kisiani River.

1137. There is a small plot of five acres (L.O. No. 4660) held on temporary licence at Kisiani by the widow of the late Nathu Ram. It is an island in the native reserve and is claimed by the natives. The Local Native Council has recommended that the temporary occupation licence should not be exchanged for a lease, but should be cancelled.

1138. The cancellation of the temporary occupation licence is a matter for consideration by the District Commissioner, and we do not propose to fetter his discretion by making any recommendation. The area involved is small, and possibly cancellation of the licence would cause considerable hardship to the licensee.

Mkenda
Swahili
Settlement.

1139. The Mkenda or Nyangori Swahili Settlement is an area of 215 acres set aside in 1904 by the Provincial Commissioner for the use of Swahili and other detribalized natives. The residents are not entirely Coast Swahilis, but are an assortment of Mohammedan natives of various tribes. The Luo, while not preferring any claim on historical grounds, state that it is their land, and ask that the Swahilis be removed.

1140. We consider that the land occupied by this settlement should be regarded as an area set apart in accordance with the provision which we shall recommend for the setting apart of land for special purposes in the third part of our Report.

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PART II—CHAPTER XII]

THE KAVIRONDO RESERVES

1141. Some of the farms on the Kipkarren River in the Trans Nzoia District, to the north of the Nandi Reserve are claimed by the natives of North Kavirondo. Before the alienation of this land the District Commissioner wrote: "There are some twelve Masai villages in this area and one or two Kavirondo villages. The present occupiers state that they have moved out of the North Kavirondo area and have twice paid hut tax on their sites."

The North
Kipkarren
Farms.

1142. The obvious conclusion from this is that the North Kavirondo natives have no claim to this particular area.

1143. The natives who appeared before us at Kisii were unique in that they had no specific claims or complaints to make with regard to land.

South
Kavirondo
Natives.

1144. The particular question of mining leases in Kakamega will receive attention in the next chapter, and again in sections 1558 to 1594 of Part III of our Report, in which we shall deal with mining questions generally as they affect the native reserves.

Summary of
the Claims of
Right
reviewed
above.

1145. In regard to the matters examined in the present chapter our conclusion is that the Kavirondo have no claim of right which can justify any extension to the native reserves beyond that proposed in respect of Kisumu township. Whatever claims the Kavirondo may have had on the ground of being deprived of various small patches of land for the purpose of trading centres, missions, etc. appears to us to have been more than amply compensated by the fact that they have been able to utilize the former neutral buffer zones between locations, which were formerly battle grounds and were left uncultivated and unutilized as they themselves admit. Moreover the areas alienated have been mainly used for the benefit of the Kavirondo themselves.

CHAPTER XIII.

THE NYANZA PROVINCE.

(c) MINING LEASES IN THE KAKAMEGA DISTRICT.

Reasons for
Special
Treatment of
the Kakamega
Mining Area.

1146. Our general recommendations on the subject of mining leases and other matters connected with mining will be found in the third part of our Report (sections 1558 to 1594). But we consider special recommendations to be necessary in the case of Kakamega, because this is the only area in which the necessity of issuing mining leases is likely to arise before legislation in consequence of our Report has been introduced, and because we think that any native whose case arose while the Lands Trust Ordinance was unamended has the right to have it settled according to the Ordinance as it then stood. But if he considers, as we do, that our own proposals as made in Part III offer better terms, he should have the benefit of them, at his option.

1147. A difficulty in putting this recommendation into practice arises from the fact that nothing in the original ordinance precisely covers the question, and we have had to consider what method of settlement is best in accord with the principles and in the terms of the Ordinance.

1148. These considerations guided us in making, at the request of the Secretary of State, the following Interim Report dated 22nd March, 1933. The first three paragraphs expressed our desire to confine ourselves to the subject of Kakamega and to leave the more general question to stand over until our full Report. The following is a verbatim quotation of the body of the Interim Report (paragraph 4 to the end):—

“When the question of the grant of mining leases in Native Reserves arose, it was found impracticable to grant such leases under the provisions of the Native Lands Trust Ordinance, 1930, with regard to leases, and it was therefore decided that the only practicable course would be to exclude any areas comprised in such leases from the reserve.

“No permanent exclusion of such land was required but merely an exclusion so long as the lease existed; exclusions of a temporary nature were not provided for by the ordinance, and it was felt that further difficulties would arise in practice in adding a small piece of land to the reserve each time a lease was granted.

“In these circumstances, as a purely temporary measure and without prejudice to any recommendations which we might make or any action which the Government might subsequently decide to take upon our recommendations, the Native Lands Trust (Amendment) Ordinance, 1932, was passed.

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PART II—CHAPTER XIII]

KAKAMEGA MINING LEASES

“We were consulted before the passing of the amending ordinance and raised no objection to it as a temporary measure, as it appeared to us that, if any action were taken under it, the natives affected would be treated in a perfectly fair manner and would in fact be as generously, if not more generously, treated than would be the case with a European upon whose property gold was discovered.

“We are now in a position, in the light of the evidence which has since been obtained, to state the general lines upon which we propose that the question as regards mining in North Kavirondo should be settled.

“Under our seventh term of reference we are asked to review the working of the Native Lands Trust Ordinance, 1930, and to make recommendations without involving any departure from the principles of that Ordinance; we feel that the amending Ordinance in no wise relieves us of our duty to do this.

“Soon after beginning to give this subject detailed consideration we came to the conclusion that, as prospecting had begun in the Kakamega area before our Commission had been appointed, and as it was taking place in a well-populated part of the North Kavirondo Reserve, any land taken for mining purposes should as far as possible be taken strictly in accordance with any principle, major or minor, of the Native Lands Trust Ordinance, 1930, which could conceivably be held on any reasonable grounds to underlie or be embodied in that ordinance; in that category we must place the provision that, if land is excluded from a reserve, an area in land equal in extent and as far as possible equal in value be added to that reserve.

“We therefore consider that an addition should be made to the reserve of an area equal in value and extent to the sum of the areas likely to be excluded in the near future by mining leases.

“We have made inquiries as to whether any land is available contiguous to the reserve which might be added to it; the choice is limited, and we are of opinion that the best solution of the problem would be the following:—

“There is in the reserve close to the North Kavirondo mining area a native forest reserve of approximately 58,000 acres, and after consultation with the Conservator of Forests we recommend that a portion of this land be taken out of that reserve and made available for any natives in the North Kavirondo area who may be dispossessed by mining leases, and that in lieu thereof a portion of the Elgon Forest Reserve, which is a Crown forest, be added to the North Kavirondo Reserve.

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KAKAMEGA MINING LEASES

“It is anticipated that at the maximum ten mining leases, in no case exceeding fifty acres, are likely to be taken out during the next year, involving at the most some five hundred acres; we recommend therefore that an area of fifteen hundred acres be made available in the North Kavirondo Forest Reserve to provide against all contingencies which can reasonably be foreseen, and that the area added to the reserve from the Elgon Forest Reserve should be of not less extent and as far as possible of equal value to that taken from the North Kavirondo Forest Reserve.

“The land from this latter forest area, thus made available for dispossessed natives, would be in their own native reserve and not far from the land which they would be leaving and would be good agricultural land; no natives other than those dispossessed should be allowed to use this land but as and when a mining lease is granted, any native dispossessed by such lease should be given an area equal in size to that which he had lost and should enjoy the same rights over it which he enjoyed under native law and custom over the land which he occupied before the grant of the lease. In addition he should receive full compensation for his huts and other buildings, for any crops which he was unable to reap, for disturbance, and also a sufficient sum to enable him to purchase food for his family until he was able to reap crops from his new land.

“We consider that the above proposals both compensate the tribe for any loss which it might be thought to have suffered, and also the individual native, who gains the use of an area close to his home instead of one at a distance from it.

“As we have seen above, the Native Lands Trust Ordinance appears only to contemplate permanent exclusion from a reserve, and is silent as to temporary exclusion. But, we are of opinion that if land is only temporarily excluded from a reserve it would be a full compliance with the spirit of the ordinance if the corresponding addition were also of a temporary character. Therefore an addition of land for a period of time coincident with that of a mining lease would meet the case, together with, at the expiration of the lease, a permanent addition of such land in respect of land which had been permanently destroyed by mining operations during the lease, assessed on a generous basis, having regard to the inconvenience in working the land caused by the presence of ruined areas and loss of amenities.

“The question thus arises whether the land to be added to the reserve should be added permanently or only during the currency of mining leases.

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"As we have stated above, we consider that a temporary addition would be in accordance with the spirit of the 1930 Ordinance, but unless the law be again temporarily amended there is no machinery under it to provide for a temporary addition.

"Therefore, in all the circumstances of the case, and having regard to the comparatively small area of land involved, we recommend that the land in the Elgon Forest Reserve be added to the North Kavirondo Reserve, as native Forest Reserve. Such an addition could, we presume, be made by the Governor under section 15 of the 1930 Ordinance, after the Central Board had advised and consented under sub-section (1) of that section to the exclusion of such areas of land not exceeding in all 1,500 acres in the Kakamega mining areas as might become the subject of mining leases.

"It might be argued that the proposal would not have been brought to the notice of the natives concerned under the first proviso to section 15 (1), as it would not be known at the time which natives would be concerned. We suggest that the difficulty might be overcome by bringing it to the notice of natives likely to be concerned, and, when any particular lease is contemplated, by again bringing it to the notice of those actually concerned.

"When a lease is finally determined, the land will be at the disposal of the Crown, which as a general rule would presumably dispose of it by sale or otherwise to the Local Native Council or to individual natives.

"If it is considered that these proposals could not be carried through under existing legislation, we recommend that the amending law should provide for temporary exclusions from and additions to a reserve; if that be done, we recommend that the exclusion and addition of land to the reserve in respect of mining activities in North Kavirondo should take effect only during the currency of mining leases.

"It will be observed that if our recommendations be followed the addition to the reserve would be an addition of native forest reserve and that, as the dispossessed natives would be accommodated on land in the reserve and not in the area added to it, no disturbance as regards native occupation would be caused when the additional area of native forest reserve reverted to the Crown at the expiration of the mining leases.

"We desire to emphasize that the above recommendations apply only to mining leases which may be granted in the North Kavirondo mining area prior to any action which Government may take after consideration of our Report, and that they are made after taking into account the conditions regarding that area and the circumstances which exist at the present time."

CHAPTER XIV.

THE NYANZA PROVINCE.

(d) THE LAND PROBLEMS OF THE SOUTH LUMBWA DISTRICT.

The Claims
made by the
Lumbwa.

1149. The claims made by the Lumbwa amount, in effect, to an allegation that a great proportion of their grazing grounds have been taken away from them and alienated to Europeans. This is undisputed and we may mention that the Sotik farmers very fairly admit that the land they now occupy, amounting to some 130,000 acres, was formerly used by the Lumbwa.

1150. The Lumbwa have an excellent war record and merit generous treatment. It is impossible to assess the land of which they can no longer make use in terms of acres, but there is no doubt that in addition to the area now occupied by the Sotik farms they grazed their flocks and herds over other considerable areas.

1151. The rights which they exercised over this land were of a nebulous character; at times they occupied it, and at times were, no doubt, driven away by the Masai or other tribes. It is of course impracticable to recognize that nomadic tribes such as the Lumbwa and Masai can be considered to have claims of right to all the land over which they may in the past have roamed and grazed their flocks and herds. But they have a right to a reasonable allowance of pasture-land, and we shall make a recommendation which will satisfy their just claims in this respect.

Reasons for
the Alienation
of the Sotik
Farms.

1152. There appear to have been two main reasons for the alienation of the Sotik farms. In the first place the farms were intended to be a buffer zone between the Lumbwa and the Kavirondo, but the administrative officers concerned do not consider that the desired results have been achieved. Secondly, the alienation was part of a general policy to depastoralize the Lumbwa. There was, and is, considerable difference of opinion among administrative officers as to whether this course was justifiable. But whether it was just or otherwise, it certainly does not seem to have had the desired effect on the pastoral proclivities of the natives, as is shown by the fact that the Lumbwa graze numbers of their cattle on the alienated farms as well as in the reserve.

Alienation of
three Farms
South of the
Nyando River.

1153. The alienation of three farms at Muhoroni on the south side of the Nyando River (L.R. No. 3977, 3978, 3979) was admitted by Government to have been a mistake. L.R. No. 3978 contains the Chematum salt-lick, and the use of this lick is of

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considerable value to the natives, who have laid claim to it. The justice of this claim has been exemplified by Government retaining this lick with an access corridor for the Lumbwa, though the natives have not yet been allowed to use it. The District Commissioner in his memorandum, makes the following comment :—

“The gesture may be magnanimous, but it is a mixed blessing, as natives will have to erect and maintain the fence at considerable expense.”

1154. There is much force in this argument, and as the land admittedly was alienated by mistake, we are definitely of opinion that any necessary fence should be erected and maintained by Government out of the general revenue, not from the Native Betterment Fund, and that the natives should then be allowed the use of the salt-lick.

1155. The above are the claims advanced by the Lumbwa on historical grounds; we now turn to the consideration of their economic needs. Economic Conditions.

1156. The area of the native reserve in native occupation today is approximately 821 square miles, the remaining nine square miles of the native reserve being alienated on lease. The population is estimated by the District Commissioner to consist of 67,942 persons, or an average density of 84 to the square mile. In addition, there are some 3,815 natives residing on neighbouring farms as squatters. As squatters' contracts can be determined at any time on due notice being given, there is at any time a possibility that a return of squatters might take place to an extent which would be embarrassing to the reserve. We have evidence that the Sotik farmers are taking to mixed farming to some extent and, therefore, the return of some of their squatters is likely to eventuate in the near future. Area and Population.

1157. It is generally admitted that the Lumbwa have sufficient agricultural land not only for their present needs, but also for any future period which can be taken into consideration; although the District Commissioner informs us that great strides have been made in agriculture and ploughing is becoming increasingly popular, there is still adequate arable land available. Agricultural Land in South Lumbwa.

1158. No count appears to have been made of the stock owned by the Lumbwa natives in the reserve, but the District Commissioner estimates that the number owned by each family unit is ten head of cattle and ten sheep and goats. The figure cannot be accepted as being much more than a guess, but it is a guess by the person who is best qualified to express an opinion. Stock Conditions in South Lumbwa.

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1159. The District Commissioner has compiled a utilization table of the reserve, which, if correct, would show that the land is over-stocked. It is as follows:—

Cultivated land.

Household use at $1\frac{1}{2}$ acres per unit	19,301 acres
Produce for sale and seed at 1 acre per unit	15,441 „
Fallow land at $33\frac{1}{3}$ per unit	11,580 „
Total ...	46,322 acres

Forestry.

Existing Forests—not of much economic use	36,864 acres
Aforestation at 1/40 acre per unit	386 „
Total ...	37,250 acres

Pastoral.

Per unit 10 head of cattle at 3 acres per beast	463,230 acres
Per unit 10 head of sheep and goats (at 5 per acre)	30,882 „
Total ...	494,112 acres

Summary.

Agriculture	46,322 acres
Forestry	37,250 „
Pastoral	494,112 „
Total ...	577,684 „
Less land available ...	517,361 „
Deficit ...	60,323 acres

1160. But we did not observe any signs of over-stocking during our tour through the reserve, and it would in fact appear that the land is able to carry its present quota of stock. There are some 35,000 cattle altogether being herded by squatters on alienated farms, and if any substantial proportion of these is returned to the reserve under conditions as they are, congestion would certainly result.

1161. We must however point out that the Lumbwa methods of agriculture are partly responsible for any apparent shortage of grazing which may exist. It is their custom to scratch up a piece

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of land on which they plant wimbi for one season only. When the crop is ripe they merely cut off the heads and leave the land to go back to bush. Were steps taken to keep their land clear of this growth of small bush with which it is now covered, it would be made into as fine grazing land as exists anywhere and could probably carry all the squatter cattle that are now outside the reserve.

1162. The general conclusion of our analysis of economic conditions must be that, while no increase of agricultural land is necessary, it is arguable whether or not an increase of grazing land is desirable for the present reserve population, but it is certain that any general movement for the return of squatter stock would cause serious disturbance unless either an addition were made or the large areas of land in the reserve, at present useless on account of the weeds and bush growing on it, were cleaned up and converted to grass.

1163. A most interesting memorandum has been submitted by Mr. I. Q. Orchardson on the subject of land tenure amongst the Lumbwa. He represents that all land is the property of the tribe as a whole and that individual property is only acquired by doing work. If a man cultivates a field, the field does not become his, but the produce grown on it does, and no one else has any right to that piece of land as long as it is used for cultivation. It is apparent that the tribe has not nearly reached the stage when individual ownership of land can emerge.

Land Tenure
in South
Lumbwa.

1164. Grazing rights are communal, as indeed are the grazing rights of most postoral tribes. This system does not lend itself readily to control of numbers of stock and use of pasture.

1165. In our view a strong case exists for an extension to the Lumbwa Native Reserve on grounds of right, in compensation for the land formerly occupied by them which they have lost. It is difficult to assess in terms of acres, but the Sotik farms and the farms south of the Nyando amount in all to something over 200 square miles, and the Lumbwa undoubtedly had rights over a good proportion of this land. It is possible that these rights are still effective under section 86 of the Crown Lands Ordinance and, if so, the leases of the farms would prove much less valuable than has hitherto been thought to be the case. We consider that the claim can be met by the provision of a suitable block addition of land to the reserve and that, thereafter, any rights under section 86 can equitably be expunged.

How the
Lumbwa Claim
should be Met.

1166. It remains to decide what area should be granted. We have seen that the Lumbwa cannot be held to be entitled to the whole area over which they grazed their flocks and herds, even were it practicable for it to be returned to them.

The
Compensatory
Area.

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Proposals
regarding
Chepalungu.

1167. The District Commissioner has recommended that the area known as Chepalungu be added to the Native Reserve.

1168. It comprises approximately 164 square miles, of which 71 are partially forest-covered. Its position is shown on the coloured map following section 2152, which illustrates our recommendations.

1169. The District Commissioner's recommendation is endorsed by the present Provincial Commissioner, and by Mr. C. M. Dobbs, C.M.G., O.B.E., who was in charge of the tribe for many years both as District Commissioner and Provincial Commissioner. It is their contention that this addition would be equitable as providing a fair recompense to the Lumbwa for the land which has been alienated, and would meet the economic needs of the tribe.

1170. A somewhat different proposal was made by the Committee which sat in 1929 to consider the Dorobo question. This Committee recommended that any of the western group of Dorobo who could not be accommodated in the Nandi or Masai Reserves should be settled in a part of the Chepalungu forest area, which however should not constitute a separate Dorobo Reserve, but should be added to the Lumbwa Reserve. It was anticipated that these locations would be known as the Dorobo locations. The Committee expressed general agreement with a suggestion made by the Conservator of Forests to the effect that Chepalungu should be divided, a part being added to the Lumbwa Native Reserve for general utilization, a part as native forest reserve, and the remainder being made available for European settlement.

Various
Objections.

1171. The local unofficial European community is opposed to the addition of Chepalungu to the native reserve, on two grounds. The first is that, as the land is said to be suitable for white settlement and has hitherto been considered to be in the White Highlands, it should be reserved for that purpose in order that the European community might have scope for expansion.

1172. Against this may be opposed the native claim, which we are now seeking to satisfy. There is also the special argument that Chepalungu is the Lumbwa apiary, and a very large trade in honey, estimated to amount to Sh. 60,000 annually, emanates therefrom. If Chepalungu were alienated, the natives would be deprived of this trade and their grievance would be increased instead of alleviated.

1173. A subsidiary objection raised by the Europeans is that, in the event of any serious disturbance or disorder, the Sotik farms would be in an exceedingly difficult position geographically, if Chepalungu were native reserve. We do not consider that this objection has very much force. Chepalungu can obviously be

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better controlled as an administered native reserve than as unalienated Crown land, while, on the evidence before us, even alienated land, if not properly developed and occupied, is apt to become a sanctuary for undesirables.

1174. In regard to the further recommendations of the same Committee that 29,190 acres should be made available for European settlement, we have to observe that the evidence before us shows that the amount of stock owned by the Dorobo whom it is proposed to move into Chepalungu is considerably larger than was believed to be the case by the Committee and more land will therefore be required for their accommodation, which would involve a corresponding diminution of the land available for the Lumbwa. We therefore consider that the amount of land recommended by that Committee for alienation to Europeans must be diminished, although there is some force in their contention that the district as it stands is on the small side to allow of the establishment of creameries and other facilities for co-operative marketing.

1175. In regard to the proposal made by the Committee and the Conservator of Forests that a part of Chepalungu be added to the native reserve as a native forest reserve, we have evidence to the effect that it is low grade forest with many open glades and we are not impressed with the necessity for this step, although we agree that the valuable timber in it ought to be preserved.

1176. After weighing these considerations we recommend that the Lumbwa claim can best be met in conjunction with the Dorobo claim as follows:—

Recommendations regarding Chepalungu.

- (1) That the whole of the land known as Chepalungu with the exception of an area not exceeding 10,000 acres, which would be available for alienation to Europeans, be gazetted as Lumbwa Native Reserve, Class A.
- (2) That Government should reserve in it such locations as it may consider advisable for the use of Dorobo who are moved into Chepalungu as a result of our recommendations in sections 978 to 982 above.
- (3) That Government should take such steps as it may consider necessary for the protection of valuable timber in Chepalungu and in particular should conserve the forest at the headwaters of the Mogor river.
- (4) That the European area be selected by the administrative authorities in consultation with the local European community.

1177. The above recommendations differ in some respects from the proposal of the 1929 Committee and that put to us by the Provincial Commissioner and District Commissioner, and will in

A Comment on the above Recommendations.

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fact allow the use of a larger amount of land for the Lumbwa and Dorobo than was contemplated in either of them.

1178. We consider that this settlement of the Lumbwa claims will be just and satisfactory to the Lumbwa, and will also be in the best interests of the European community. With the full settlement of the Lumbwa claims we recommend that any rights of occupation on the Sotik farms or elsewhere which may hitherto have been protected under section 86 of the Crown Lands Ordinance, 1915, or the corresponding provisions of the Crown Lands Ordinance, 1902, shall be held to have come to an end, and that there will be no hardship if they are expunged.

1179. If our recommendations in regard to Chepalungu are accepted, we see no reason why the remaining Crown land in the district should not be alienated.

The Kibait
Bitein Salt-
Lick.

1180. The Lumbwa have asked for access to the Kibait Bitein salt-lick. We see no reason why they should not be permitted to take from it such salt as they require, provided that they are given no rights to take their stock there.

Application for
a Township at
Sotik.

1811. It is desired by the European farmers at Sotik that an area of approximately 5,000 acres in the native reserve at Chemagel should be excised for township purposes.

1182. They allege that in recent years a total area of some 13,000 acres which had been earmarked for European settlement was included in the native reserve—possibly in error. We have made inquiries at the Land Office and find that such was not the case, the land in question having always been in native occupation.

1183. At the same time, we entirely agree that a township at Chemagel would be most desirable, and we recommend that it be provided. We are of opinion, however, that 5,000 acres are more than are necessary for the purpose, and that at the outside 1,200 acres, or approximately two square miles, should be ample for all reasonable township requirements.

1184. The general question of townships will be considered in Part III of our Report and we would merely mention in this place that we are not in favour of excision, but consider that townships should be administered as integral parts of native reserves, the Local Native Council receiving any net profits remaining after working expenses have been paid. We can see no good reason in this case for a departure from the general recommendation which we shall make.

1185. Sotik Post, which was set apart for a township, will therefore no longer be required for that purpose, and will be available for alienation.

CHAPTER XV.

THE COAST PROVINCE.

(a) NATIVE RESERVES OF THE HINTERLAND.

1186. The Native Reserves of the Coast Province proclaimed under Government Notice No. 394 of 1926 are shown under the following titles: the North Pokomo Native Reserve; the Central Pokomo Native Reserve; the South Pokomo Native Reserve; the North Nyika Native Reserve; the South Nyika Native Reserve; and Native Reserves in the Digo District other than the Nyika Native Reserve. The Taveta, Dabida and Sagalla Native Reserves were originally gazetted as part of the Ukamba Province, but, for administrative purposes, have since been transferred to the Coast. We shall discuss all these reserves in the order named, except that we shall consider the Central and Southern Pokomo together.

The Native
Reserves as
Gazetted.

1187. The North Pokomo Native Reserve, though proclaimed as one of the native reserves of the Coast Province, is included for administrative purposes as part of the Northern Frontier Province. It is 119 square miles in extent. The people are known by the Central and Southern Pokomo as the "Korokoro" and have little affinity with them. The language which they speak is of the Hamitic group, while the Central and Southern Pokomo speak a language practically identical with Swahili. The area reserved to the Korokoro is believed to be adequate; no evidence to the contrary has been advanced, and the only observation which we have to make is that, while we shall recommend that all the other native reserves of the Coast Province be regarded constructively as one reserve, it would probably be better that the Northern Pokomo should remain separate, so that its future may in no way be prejudiced as to whether, for general administrative purposes, it should be regarded as part of the Coast or as part of the Northern Frontier Province.

The North
Pokomo
Native
Reserve.

1188. The Central and Southern Pokomo Native Reserves comprise altogether 157 square miles, while the population, as given in the Annual Report for 1932, is 11,365, giving a density of 72 to the square mile.

The Central
and Southern
Pokomo
Native
Reserves.

1189. The Central Reserve consists of two blocks and the Southern Reserve of seven blocks, giving an average size of 17 square miles per block. The small size of these blocks might suggest the conclusion that insufficient provision has been made for future expansion, and that possibly the more favoured blocks might become congested.

1190. The problem which presented itself in deciding what areas should be gazetted as native reserves for the Pokomo was that a sparse population was spread for some hundreds of miles all

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along the banks of the lower Tana river. A line drawn parallel to the banks and about a hundred yards back would include practically the whole of their gardens except such as are made by the side of lakes which are formed when the river is in flood.

1191. It would clearly have been impossible to reserve the whole river frontage of so great an extent of the largest and potentially the most valuable river in the Colony for the exclusive use and benefit of a small native tribe. The plains through which the river runs cannot be agriculturally developed without irrigation, and it is generally believed that very extensive areas, now useless, could be rendered productive by large companies with adequate resources. It is no disparagement of the Pokomo, who compare very favourably with other natives in agricultural attainment, to state that the proper development of these plains is quite beyond their capabilities. But, if large companies could be induced to take an interest, their presence would be of great advantage to the Pokomo in providing a local market for their produce and for their labour. It is also probable that some scheme of co-operation could be devised by which a company would manage irrigation works, but the actual growing of the crops would be left in the hands of the natives. Sugar cane and rice are at present the most successful economic crops; large quantities of bananas and some tobacco are also grown.

1192. The Pokomo keep no cattle, but have friendly arrangements with the Galla, with whom they have a few cattle at call.

1193. In view of these considerations it was decided, we think rightly, that the reserves which were gazetted would be adequate for the Pokomo. They contained nearly all villages of any consequence, and most of the cultivated land as well as extensive areas not yet taken into use. There were, however, several strips of cultivation along the river banks in places not included in the reserves. We understand that there was no intention to prevent the Pokomo from continuing to cultivate these patches or from extending them if they should desire to do so, and they have not, in fact, been prevented. We are satisfied that in present circumstances it would not be wise to interfere so as to prevent cultivation outside the reserves, but we recommend that the position should be regularized by an annual issue of a licence or permit, so that there may be no room for doubt as to what is Pokomo country and what is at the disposal of the Crown.

1194. If it should ever happen that grants are made to companies so extensively that most of the land intervening between the blocks of native reserve is taken up, it will probably be necessary to increase the reserves to provide for the growth of native

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population which would be almost certain to result. But it will be many years before such a situation occurs, and we need not consider it in detail.

1195. In view of the large amount of good agricultural land lying idle on the Tana River, we have considered the advisability of constituting a "C" area (Native Leasehold area) there. While we think that native groups might well be assisted and encouraged to apply for leases of blocks of land to be held on group tenure in the manner which we describe in sections 1880 to 1935 below in dealing with the method of tenure in "C" areas, we consider that the status of the land itself should be "D", i.e. that it should be an area in which no special privilege of race applies, and that there should be no restriction as regards either initial grants or as to transfer between races.

1196. The Northern Nyika Native Reserve comprises 2,349 square miles, and has a population of 90,047. A considerable proportion of this population is known to be living in the Coast strip outside the confines of the reserve, but even if they were all to return the density would only be 38 to the square mile. The country, though somewhat arid and unattractive, is not unfertile, and, if agricultural and pastoral methods are improved, is undoubtedly capable of supporting a larger population.

The Northern
Nyika Native
Reserve.

1197. The District Officer at Malindi considers that the Nyika have a claim to an extension of their reserve northwards, so as to include the settlements of Dololo, Kambe, Dakacha, Lafiti, Adu and Sameta, which contain a total population of 1,828 persons, of whom 97 are Sanye and the remainder Nyika. The alteration of boundary which he proposes would add 414 square miles to the reserve.

1198. By the District Officer's own showing the density of population in this area is under five to the square mile, and a considerable percentage of this population is believed to have immigrated since the reserve boundaries were gazetted. In 1917 there were only 34 huts at Adu, mostly belonging to the Sanye, but now there are 102 huts, mostly belonging to the Nyika.

1199. The Nyika are notoriously a people who have a fondness for opening up new settlements for themselves beyond their fellows, and some of them have even penetrated as far as Ngao on the Tana River. There would clearly be no justice in extending the reserve boundaries to include every petty settlement of this nature and so secure large tracts of intervening land to the use and benefit of the tribe for ever, to the exclusion of all other interests.

1200. We are satisfied that the settlement reached in 1926 by the proclamation of the reserve boundaries was a fair settlement of

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the Nyika claims on the north bank of the Sabaki River, which had formed the subject of the Malindi Inquiry in 1916, and we find no reason to reopen the question.

1201. We consider that, if the natives of Adu and the other settlements named can show beneficial occupation, they might be allowed to take a lease of sufficient land for their requirements. Having regard to the fact that there is no present demand for the land in any other quarter and that it is of little intrinsic value, we suggest that a very low rental would suffice.

The Southern
Nyika Native
Reserve.

1202. The Southern Nyika Native Reserve is understood to be reserved for the use and benefit of the Digo and Duruma tribes, although it is not so stated in the gazettelement. The total area is 1,825 square miles. The total population of Digo and Duruma natives living in the Digo District, of which this reserve forms a part, is 49,653. An unspecified number of them live outside the South Nyika Native Reserve either in the native reserves of the Coast strip or on private land, but even if they were all living in the South Nyika Reserve the density would only be 27 to the square mile. It is a fact that about a third of the whole area is covered by the Taru desert, but the remaining two-thirds contain large stretches of land suitable for agriculture, and the reserve is fully adequate to the needs of the present population. Any increase to be expected in the next generation can easily be accommodated, if reasonable attention is given to the improvement of agricultural methods.

The Mwachi
Valley Claim.

1203. A claim has been preferred on behalf of the Duruma to rights in the Mwachi Valley. In the course of evidence given to us at Waa in the Digo District on 14th December, 1932, a Duruma witness named Charles Mwakipuli stated :—

“There is an area called ‘Mwamdudu’ in the Mwachi Valley, west of the railway, which has been given to Indians without our consent. We had coco-nut plantations there for which we received no compensation.”

The District Commissioner, Mr. C. T. Davenport, explained that the Duruma regarded as theirs much of the land alienated by Government on the banks of the river Mwachi lying generally south-west of the railway between Miritini and a point some miles south of Mazeras station. He added that much of the land alienated had not been developed, and suggested that the natives should be given certificates of interest in respect of their huts.

1204. Mr. J. F. G. Troughton, District Commissioner, Taveta, who had previously served in Digo District, stated in his evidence :—

“In the early days in the Mwachi Valley near Mazeras a large area of land was alienated chiefly, I believe, to Indians,

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without much regard to native requirements or native occupation . . . There is, so far as I can remember, practically no non-native development on this alienated land, but a considerable amount has been used by the natives for a long time, and there is a lot of native cultivation in the Mwachi Valley to this day."

1205. Further investigation of the position has brought to light the following facts :—

By an agreement dated 4th June, 1908, nine Duruma elders, purporting to be "the elders of the Duruma tribe" signed an agreement with Government by which in return for a payment of a thousand rupees they surrendered "all the rights of the said tribe and of any and every member thereof" in certain areas of land which included "the twelve homestead plots on the banks of the Mwachi River", provided that if any of the Duruma "owners" should be required by the Government lessees to quit their present holdings or to stop cultivating, "they should be duly compensated."

(a) The Agreement of 1908.

Under the same agreement they also ceded their rights to the Mwachi Forest Reserve and to a plot of twelve acres leased to a Mr. Tonks, subject to the same proviso as to compensation for disturbance and subject to a special proviso that the Duruma people should retain the right to visit the two "kayas" or sacred places on the land of Mr. Tonks and have access to burial grounds on any of the areas ceded.

1206. The map following this page shows the present position. The area affected by the Mwachi Valley agreement, as apart from the forest reserve, is some 8,310 acres, of which 4,979 acres have been alienated by the Crown on freehold and 1,648 acres on leasehold, while 1,683 acres are unalienated Crown land. There are also some 1,657 acres which have been adjudicated to the owners in freehold under the Land Titles Ordinance, but this land does not appear to have been affected by the agreement.

(b) The Present Position on the Land.

The land was originally taken up in the rubber boom of 1908, and when rubber failed, was soon abandoned by the title holders. The Indian owner of L.O. 1031/1 has planted some coco-nuts and is still tending them, and there has been some development on the mission plot (L.O. No. 1271). On a portion of L.O. No. 1017 a few coco-nuts remain, said to have been planted by former Duruma inhabitants. But while the title holders have left, the Duruma appear to be occupying the valley in increasing numbers. The District Commissioner writes :—

"These people are cultivating the land extensively compared with most other parts of their reserve."

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According to information supplied by the District Commissioner there are no fewer than 416 families living on these farms. In addition there are 94 huts belonging to natives of other tribes. The distribution of the huts is shown in the District Commissioner's memorandum which appears at p. 2608 of the Evidence.

(c) Circumstances in which the 1908 Agreement was made.

1207. The Duruma elders were certainly at a disadvantage in the discussion regarding compensation since the alienation of the land had already taken place. The District Commissioner states, on information derived from the Duruma, that they twice refused the offer of the thousand rupees, but finally accepted it "because they considered it better to take what was offered rather than lose everything."

In the course of evidence in a land registration case in Mombasa in 1921, Mr. G. H. Osborne, then District Commissioner, stated :—

"Proper inquiry had not been made as to the native rights before alienation, and the compensation was the result of such alienation."

(d) Land Titles Cause 1/c of 1922.

1208. In cause No. 1/c of 1922, taken before the Recorder of Titles, one Lucas Mgandi, a Duruma native, claimed the piece of land known as L.R. No. 1037, 1,631 acres in extent, on the ground that it was Duruma country and that he had inherited it according to Duruma custom. The Rev. J. B. Griffiths gave evidence in support of his claim; the Recorder found it to be good, and freehold title was issued accordingly. This land is situated in the Mwachi Valley and adjoins both the forest reserve and the block occupied by the twelve homestead plots. This is corroborative evidence that the land was Duruma country. Even apart from this evidence, the map itself would create a strong presumption to that effect: Native reserve flanks the Mwachi Valley on both sides and it would be strange if the valley itself, which contains the most fertile land, was not also native country.

Recommendations regarding the Mwachi Valley.

1209. We are unable to make a definite recommendation on the settlement of the Duruma claims in the Mwachi Valley. We had certain recommendations under consideration, but important evidence has come to hand at the last moment, and we feel that, even now, we have not all the information before us which would warrant us in reaching a final conclusion. We have therefore confined ourselves to a summary of the facts as presented to us and we invite special attention to the evidence which will be found at pp. 2602 to 2609 of the printed record. We are satisfied that grounds exist for a special inquiry, and we recommend that it might suitably be undertaken by the Provincial Commissioner.

The Mwache Forest Exchange.

1210. The Mwachi forest was originally secured to the Forest Department by an agreement dated June, 1908, and signed by nine Duruma elders purporting to contract on behalf of the tribe. Under

MAP ILLUSTRATING THE POSITION IN THE TOWNSHIP OF MAZERAS, B.C. OF THE LANDS ALIENATED TO THE CROWN LANDS COMMISSION

NATIVE RESERVE

MAZERAS TOWNSHIP

M'WACHI FOREST RESERVE

M'WACHI RIVER

STA.

1017, 1034, 1033, 1029, 1036, 1038, 1029/R, 1035/1, 1035/2, 1037/2, 1037/R, 1030, 1037/1, 1032/2, 1031/1, 1031/2, 1031/3, 1031/4, 1031/5, 1031/6, 1031/7, 1031/8, 1031/9, 1031/10, 1031/11, 1031/12, 1031/13, 1031/14, 1031/15, 1031/16, 1031/17, 1031/18, 1031/19, 1031/20, 1031/21, 1031/22, 1031/23, 1031/24, 1031/25, 1031/26, 1031/27, 1031/28, 1031/29, 1031/30, 1031/31, 1031/32, 1031/33, 1031/34, 1031/35, 1031/36, 1031/37, 1031/38, 1031/39, 1031/40, 1031/41, 1031/42, 1031/43, 1031/44, 1031/45, 1031/46, 1031/47, 1031/48, 1031/49, 1031/50, 1031/51, 1031/52, 1031/53, 1031/54, 1031/55, 1031/56, 1031/57, 1031/58, 1031/59, 1031/60, 1031/61, 1031/62, 1031/63, 1031/64, 1031/65, 1031/66, 1031/67, 1031/68, 1031/69, 1031/70, 1031/71, 1031/72, 1031/73, 1031/74, 1031/75, 1031/76, 1031/77, 1031/78, 1031/79, 1031/80, 1031/81, 1031/82, 1031/83, 1031/84, 1031/85, 1031/86, 1031/87, 1031/88, 1031/89, 1031/90, 1031/91, 1031/92, 1031/93, 1031/94, 1031/95, 1031/96, 1031/97, 1031/98, 1031/99, 1031/100.

Crown Land

Crown Land Alienated

Crown Land	Shewn thus
Crown Land Alienated Leasehold	
" " " Freehold	
Land held Freehold under L.T.O.	

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the terms of this agreement the tribe surrendered "all the rights of the said tribe and every member thereof" on certain areas which included the "area marked as Forest Reserve" for a consideration of one thousand rupees, but there was a reservation of certain rights, which are described in the Secretary's précis at p. 2524 of the evidence.

1211. Apart from the difficulty created by the reservation of rights, there was the further difficulty that the boundary of the forest reservation was so ill-defined as to be described by the Surveyor General as unintelligible. The natives took advantage of the general uncertainty which has prevailed and are now squatting in this forest in large numbers.

1212. A solution was proposed by the District Commissioner, Digo, in 1928. He suggested that the Forest Department should surrender the two areas marked "A" and "B" on the map, here following, in return for the area marked "C". The two former areas contain the two sacred places or Kayas, and most of the area of native settlement.

1213. Under this proposal, to which the Conservator of Forests and the Provincial Commissioner both agreed, the Forest Department would give up to the South Nyika Native Reserve :—

				<i>Acres</i>
Area "A"	...	...	...	504
Area "B"	...	...	...	1,446
Total	...			1,950

and would get from the reserve :—

Area "C"	...	...	...	2,000 acres
----------	-----	-----	-----	-------------

The Duruma Local Native Council has expressed itself as strongly in favour of this proposal.

1214. The proposed exchange is practically on an acre for acre basis. There appear to be two relevant considerations in respect of this :—

On the one hand it might be claimed on behalf of the natives that, if the exchange is to be on this basis, then they should retain certain rights in the Area "C" since they already have certain rights in the Areas "A" and "B".

On the other hand, it appears to be a fact that the Areas "A" and "B" which the natives would get, are better agricultural land than the area "C" which they would surrender.

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1215. We consider that these two considerations may fairly be balanced against each other, and that the exchange is equitable and to the advantage both of the tribe and of the Forest Department. The chief advantage of the exchange to the natives is that they will have a clearly understood boundary, which would include their two sacred places in the reserve, and we accordingly recommend that it be implemented.

1216. There are three small native settlements in the area "C" which would be surrendered. We consider that the Local Native Council may justly be called upon to pay any necessary compensation for disturbance, both to them and to any other natives who may have to be moved as a result of the agreement.

The Taveta
Native
Reserve.

1217. The Taveta Native Reserve comprises 46 square miles. The population is estimated at 3,367, giving a density of 73 to the square mile. The country has been stated in evidence to consist of swamp, dry bush, forest and pasture land in the following proportions :—

Swamp	...	...	...	14,720 acres
Forest	...	...	...	3,680 acres
Dry bush	...	...	...	9,200 acres
Grazing	...	...	...	1,840 acres

History of the
Taveta.

1218. So far as can be ascertained, the history of the Taveta before the days of the British Administration is that they dwelt in the rich and fertile Lumi River forest, and had to keep their cattle in their huts owing to the prevalence of fly and fear of the Masai. After the Protectorate had been declared, they began to graze their stock more in the open.

1219. Archdeacon Maynard, who has lived in the district for the past 37 years, stated in his evidence :—

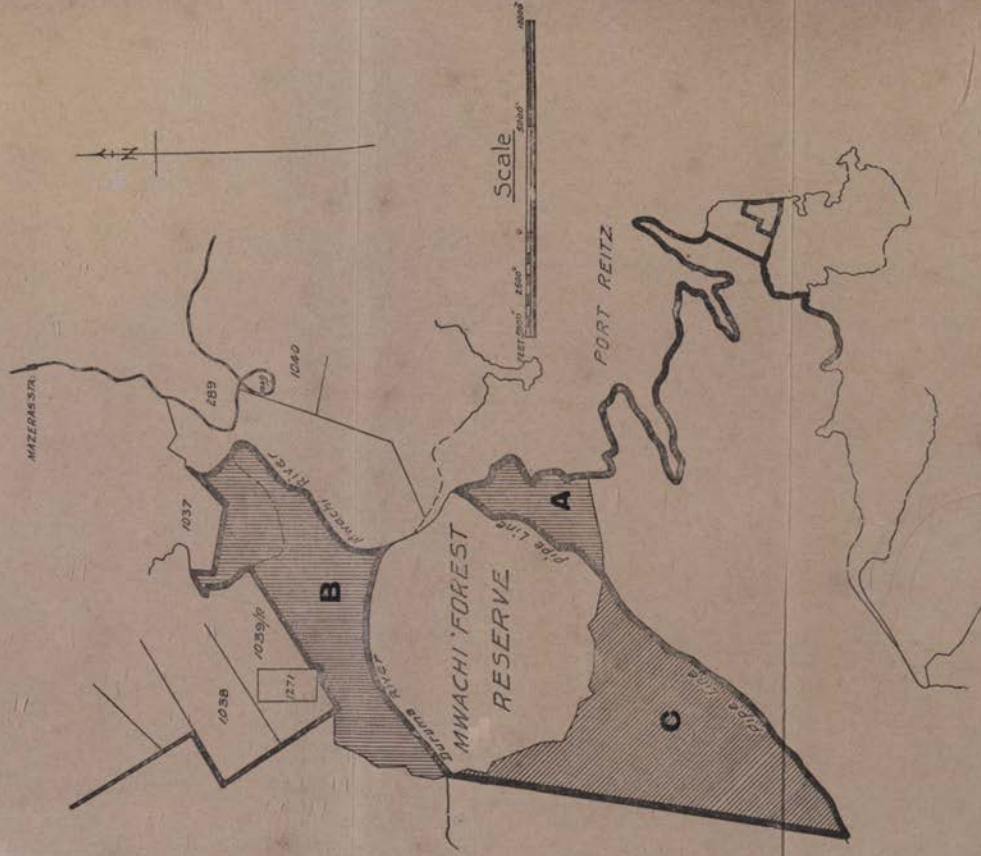
"A certain number have kept their cattle in huts and some in the open. They have not feared the Masai since I came to the country, which was in 1896."

1220. It therefore appears that the claim of the Taveta to more pasture land cannot be supported on historical grounds of long and continuous use, because they were in fact prevented from using the land by the Masai. But they are on firmer ground when they claim that they ought, on economic grounds, to be provided with pasture land sufficient for their needs.

The Stock
owned by the
Taveta.

1221. The total number of stock owned by the Taveta has recently been counted and the figures are 3,532 head of cattle and 9,036 sheep and goats, i.e. approximately five head of cattle and 13 sheep and goats per family.

DIAGRAM ILLUSTRATING THE
MWACHI FOREST EXCHANGE
AS RECOMMENDED.



Additions to Native Reserve under Class A shewn thus.....

Exclusion from Native Reserve shewn thus

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1222. Although Veterinary Inspector Hassan told us that a considerable part of the area shown as swamp is good grazing, we consider that the grazing land is inadequate for the needs of the tribe. Stock cannot be pastured in the forest glades because of the presence of tsetse fly, and we consider that there is a good case for an addition of pasture land to the reserve.

The Need
for more
Pastureland.

1223. The claim is supported by Administrative Officers and by the local European residents.

1224. There is, besides, another reason for recommending an addition: the Taveta have their homes chiefly in the forest, but because of its malarious character an effort is being made to induce them to leave it and live on the plateau above, and for this purpose also an extension is considered to be necessary.

The Need for
an Upland
Area for
Residential
Purposes.

1225. The proposal is that their gardens should remain where they are in the forest glades, but that they themselves should make their homes on the higher land, to which they would return each evening. It has been stated in evidence that the people are physically under-developed because of the unhealthy nature of the country which they inhabit.

1226. The map following section 1235 shows the existing Taveta Native Reserve and the various additions which have been proposed. The curious shape of the Reserve will at once challenge attention, and it will clearly be of advantage if any adjustments made for the two purposes already specified have also the result of giving the reserve a more convenient shape.

Consideration
of Possible
Additions.

1227. With this end in view a proposal was advanced by Mr. W. S. Marchant, District Commissioner, that the area marked "A" on the map, which consists of forest and agricultural land and is sparsely peopled, be exchanged for the area marked "B", which is suitable for grazing.

1228. The Taveta themselves do not favour this proposal, and we find ourselves in agreement with their view that they would lose more than they would gain, since Area "A" is very good agricultural land, while "B" is of a very rocky character and not particularly valuable for grazing.

1229. We are more impressed with another of Mr. Marchant's proposals, which has the support of the Provincial Commissioner and the present District Commissioner. It is to the effect that the areas marked "D" on the map, which are good pasture land, should be added to the reserve. They comprise twenty-two square miles, and we recommend that they be added to the Taveta Native Reserve as Native Reserve, Class "B.1".

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1230. In order to consolidate the small northern "island" of Native Reserve near Taveta Township with the main block, we recommend that the corridor marked "E" on the map be added from adjoining Crown land. The Veterinary Inspector has informed us that it would be possible to clear it of fly and so to provide access for cattle. We recommend that this corridor, approximately 0.50 square miles, be Native Reserve, Class "B.1".

1231. It will be observed that, if this recommendation is accepted, L.R. No. 4881 (Messrs. Sedgwick and Goodwillie) will be an island, surrounded on two sides by native reserve, on a third by a block held by the Church Missionary Society which is treated for practical purposes as if it were native reserve, and on the fourth by the corridor. There would therefore appear to be a good case for the purchase of this land for addition to the native reserve. We understand that the owners are prepared to negotiate for its disposal. While we do not feel that there is any obligation on Government to acquire this land, we understand that there is a considerable sum of unclaimed money in compensation for war damage on deposit with the Teita Local Native Council, earmarked for expenditure at Taveta. Some of this might with advantage be spent on the acquisition of L.R. No. 4881.

L.R. 4881.
Result of the
Recommendations.

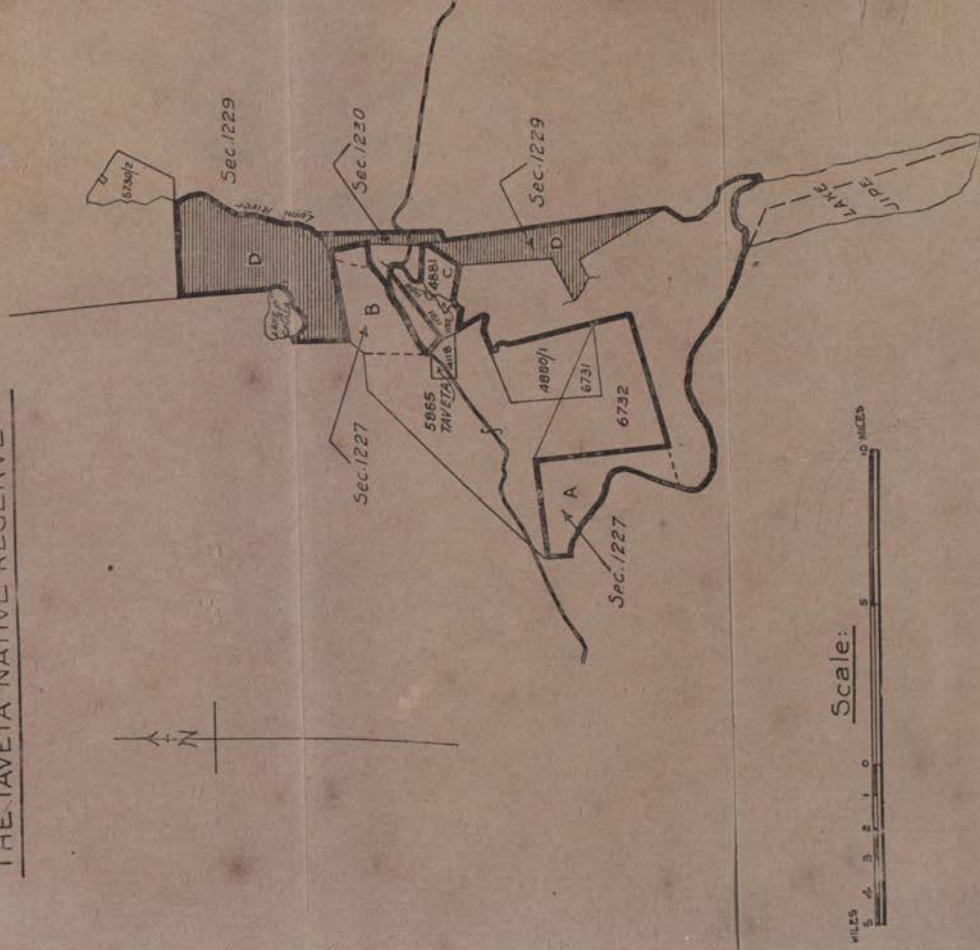
1232. The result of these recommendations, if accepted, will be that the reserve, though still of an awkward shape, will be consolidated into one block and will have acquired a sufficiency of grazing land and an expanse of open country more healthy for the natives to inhabit than their present homes in the forest.

Development
of the Reserve.

1233. A word must be said on the subject of development. The dread of the Masai in the past, by confining the Taveta to a narrow space, forced them to an agricultural rather than a pastoral mode of life, and it is important that their agricultural habits should be maintained and the degree of skill be improved. The Taveta have a large amount of cultivation in the forest, where the soil is very rich and fertile. Considerable quantities of bananas, maize, beans and onions are grown, especially the first named. While these activities should be encouraged, it is also necessary to ensure that the forest is not wantonly destroyed, and we understand from the Conservator of Forests that rules are in contemplation to regulate the cutting of saplings, which should materially assist in preserving the forest without interfering with the legitimate needs of agriculture.

1234. A point to which we desire to draw attention is that the part of the native reserve which is marked "A" on the map lends itself to development by irrigation, and that it is probably beyond the unaided capacity of natives to develop it to the best

DIAGRAM ILLUSTRATING THE
RECOMMENDATIONS REGARDING
THE TAVETA NATIVE RESERVE



Additions to Native Reserve under
Class B shown thus: 

To face section 1235.



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advantage. We suggest that Government should consider the advisability and practicability of inviting the neighbouring estate, the Kilindini Harbour Wharf and Estates Company, to enter into some arrangement for providing the necessary irrigation works on some form of agreement mutually satisfactory to themselves and the natives.

1235. While we do not make any definite recommendation, we are of opinion that, if a workable scheme could be devised, it would be of great advantage, not only to the company and to the natives, but also to the Colony as a whole.

1236. We shall next examine the land problems of the Dabida Native Reserve, inhabited by the Teĩta tribe. The area is approximately 200 square miles, and the total population is estimated at 39,674. The density is therefore 198 to the square mile—a high figure for this type of country.

The Dabida.
Native
Reserve.

1237. The evidence which we have heard on the rate of increase of population is remarkable. During the past three years, according to the District Commissioner, the average annual rate of increase has been no less than 4.57 per cent. Over a period of thirteen years it works out at 4.26 per cent, which is so high as to be very unlikely, and is much in excess of the rate shown by any other tribe. There is no evidence of any appreciable immigration. The statistics kept at the Bura Roman Catholic Mission, which are probably more accurate than those relating to the reserve as a whole, show an annual rate of increase of 3.66 per cent in a part of the reserve which is generally regarded as unhealthy.

The Rate of
Increase of
Population.

1238. It is difficult to find an adequate explanation of so high a rate of increase. We do not consider that the figures can be accepted entirely at their face value, but we accept the general conclusion that a high rate of increase prevails.

1239. Land among the Teĩta appears to be owned by clans, and, within the clan territory there is a system of private tenure obtaining. In fact, it is said that sales of land between natives sometimes occur, and are recognized by the tribe (compare Evidence, pp. 2732, 2749 to 2756).

Land Tenure
among the
Teĩta.

It has been stated in evidence that clan boundaries radiate from the hills and proceed as far as the land can be utilized.

1240. The numbers of stock owned by the Teĩta are so few as to be almost negligible, and the available milk supply is very scanty.

Agricultural
and Pastoral
Conditions.

1241. As agriculturists the Teĩta display commendable industry. Maize, beans and potatoes are the principal crops, while considerable quantities of European vegetables and some fruits are also grown.

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1242. It is generally considered that the amount of arable land does not exceed 40 per cent of the total area, a considerable proportion of which consists of precipitous slopes and forest. If we adopt this estimate, the average acreage available per family amounts to 6.19 only, and, particularly taking into account the rapid rate of increase and the progressive nature of the people, we are of opinion that this is inadequate for the tribe.

1243. It has been stated in evidence that, owing to cold and dampness, maize does not grow well in the hills during the long rains. The natives therefore plant it in the hills during the short rains only, and in the plains during the long rains. This fact strengthens their claim to land in the foothills.

1244. It is probable that improved methods will enable some land not now considered cultivable to be brought under cultivation, and the land under cultivation to give better yields, but, even so, we are satisfied that an extension is required.

Specific
Claims.

1245. After this preliminary survey, we shall now proceed to the examination of specific claims.

Claim by
Wateita to
Wundanyi
Estate (L.O.
924).

1246. The Teita claim Wundanyi Estate, which is an island of approximately 1,288 acres in the heart of the native reserve.

1247. The history of the estate is that in 1903 the Industrial Missions Aid Society applied for an area of approximately two square miles in Dabida for the purpose of cultivation. In this connexion the evidence of the Ven. Archdeacon Maynard, on whose advice the Society took up the land, is interesting. He states:—

“It was an Industrial Mission attached to the Church Missionary Society with the object of helping the Church Missionary Society in its work by taking up land and helping the natives to cultivate better. This land was originally given to the Society for that purpose, of helping the people in the hills.”

1248. The Society was granted the area known as Wundanyi, and an unconditional title in fee simple was issued in 1906.

1249. We are quite satisfied that there was some native occupation on the estate at the time and that, in fact, most of it, if not all, was “owned” by the natives according to Teita custom.

The following are extracts from evidence:—

Rev. V. V. Verbi (referring to Wundanyi):

“There were some claims . . . Here the land was taken and nothing was paid for it either to Government or to the natives.”

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Mr. C. W. Hobley :

“This grant covers one of the few flat areas in the mountain mass, and I submit that its approval was unfortunate for it was even at the time of its allotment of great value to the Teita tribe.”

Ven. Archdeacon Maynard, who has been resident in the vicinity for many years :

“We knew that it was ‘owned’ by natives and that was what we wanted . . . The idea was to develop those parts of land that were not being used, and, if any piece of land was required that was being used, then those people would be compensated.”

1250. The Industrial Missions Aid Society transferred its title to East African Industries, Limited, in 1906, the year in which the freehold title was first granted. In 1916 this company sold the property to Wundanyi, Limited, which in 1922 leased it to Major Dru Drury for ten years. This lease expired on 31st December, 1932.

1251. In addition to the manager's house and garden, the estate includes a small golf course, and 173 acres of coffee in bearing. The remainder of the estate is thickly occupied and cultivated by the natives, who are not registered as squatters, but live the normal life of natives in a reserve. Development of the land by the freeholders has caused some disturbance of the natives.

1252. A permit to occupy pending survey was issued in 1902 and was converted into a freehold grant in 1906; in the interval it would appear that the question of native rights on the land was overlooked.

1253. We find as a fact that the natives have a good claim to the land on grounds of historical use. The freehold was granted to an Industrial Missionary body, and in the same year it was transferred to a company, which transfer rendered it liable to sale in the event of liquidation. It is now developed for private profit. The owners are anxious to dispose of the property to Government, because they recognize that if the estate is offered on the open market, the original policy of utilizing the land for the benefit of the natives would cease to exist. The price asked is £5,000; it is claimed that this does not represent an attempt to make a profitable sale, but that the sum is approximately the amount which has actually been sunk in the development of the estate.

1254. The case for the acquisition of this land appeared to us to be so strong and a matter of such urgency that, on 14th February, 1933, we submitted to Government an interim recommendation

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advising that the estate should be purchased without delay. We adhere to that recommendation.

1255. We further recommend that the whole area (1,288 acres) be added to the Dabida Native Reserve as Class A land. The site of the homestead and buildings might conveniently be set apart for a native social service centre.

Claim to Land
on the Plains
and Foothills.

1256. The Teita complain that, while their present reserve is mainly confined to the hills, they used in the past to cultivate on the plains and foothills which now for the most part lie beyond the confines of their reserve.

1257. We have independent evidence as to the general truth of this statement.

Evidence of Mr. C. W. Hobley (Memorandum) :—

“The Teita people in the wet season planted maize on the flats immediately surrounding the range. This cultivation rarely extended more than a few hundred yards from the base of the mountains.”

Evidence of Mr. C. R. W. Lane :—

“The natives lived on the hills and cultivated in the foothills.”

Evidence of Hindi bin Hamisi, a Swahili who was attached to Thomson's safari and who later served with Lord Lugard and the late Sir F. Jackson :—

“The Teita in the Dabida Hills had their houses and villages on top of the hills, but they had their cultivation on the plains below the foothills and in some parts they cultivated considerable distances away from the foothills, returning above in the evenings when their work was finished.”

The Report of the Mombasa-Victoria Lake Railway Survey (1893) :—

“Their villages . . . are situated on the hilltops, and they cultivate all the small valleys where soil and water are found together. Their cultivation extends to the lower slopes of the hills and into the surrounding plains.”

1258. It will be noted that all the above evidence is general in character. It is evident that the Teita cultivated in the plains and foothills, but does not particularize as to any precise locality.

Claim to part
of L.R. 3880,
Teita
Concessions.

1259. Archdeacon Maynard is more explicit in his evidence, and states :—

“To my knowledge considerable parts of it (Teita Concession land) have been cultivated for the last 35 years . . . The Mwatate Valley has been cultivated for four miles south of the railway for years.”

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1260. The alienated land in places goes right into the foothills, and even apart from this evidence there would be strong presumption that the Teita made use of it for cultivation.

1261. At the present day there is considerable cultivation by the Teita at the north-eastern end of L.R. No. 3880, Teita Concessions, Ltd., extending for perhaps half a mile south of the Voi River. But on the rest of the concession there is practically no cultivation by the Teita, as apart from the Kasigao, an allied tribe, whose case will be considered separately.

1262. That is not to say that the Teita never had more use of it than this, but we shall recommend an extension to the reserve in another quarter which will be more than sufficient to compensate any claim in that respect, and we need consider at the moment only the claims of the Teita who are still in occupation. We recommend that negotiations be opened with the company for the surrender of an area of land approximately three square miles in extent at the north-east corner of the concession in the general position shown as area "W" on the map which follows section 1271. This, as we believe, will include practically the whole of the land now in cultivation by the Teita on this estate.

1263. For a reason which we shall explain below (section 1269) we consider it just that the company should be required to make a free surrender of this land.

1264. Part of the Teita Concessions is also inhabited by the Kasigao, whose history is briefly as follows :—

The Claim of
the Kasigao.

They originally lived on Kasigao mountain, which fell into enemy hands during the Great War. Its position is shown on the map.

1265. The Kasigao natives were suspected of treachery and were deported by Government to Malindi District. At the end of the war, they were permitted to return to the Teita District, but for administrative reasons, they were not allowed to settle at their former home at Kasigao, but were required to live on the slopes of the Sembe and Zongoloni hills near Mwatate. These hills are situated on the land which has since been alienated to Teita Concessions, and their position is shown on the map.

1266. The lease to Teita Concessions contains specific reference to the provision of section 86 of the Crown Lands Ordinance, and the rights of the Kasigao and the Teita who were in actual occupation were clearly protected, the areas in occupation by them being deemed to be excluded from the lease.

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1267. When the concessionaires discovered the extent of native occupation, they applied for a further grant of 10,000 acres in compensation, and an extension of approximately this acreage was granted at a stand premium of Sh. 2 per acre. This land is known as L.R. No. 6924.

1268. We consider that the best practicable settlement of the Kasigao claim at this date is that the company should surrender the area of approximately 11 square miles shown on the map and marked "X". It includes the present houses of the Kasigao and provides two accesses to water and is joined to the main reserve by a corridor. It is not practicable to recommend that the land between the hills and the Mwatate river should be given up to the Kasigao, because it is already fully developed under sisal, but we consider that the area which we recommend to be surrendered would satisfy their just claims.

Reference to the map illustrating these proposals will reveal a small area extending northwards from the north-west corner of "X" as being recommended for inclusion in the native reserve. The reason for this is that there are a few patches of native cultivation in this vicinity. Without wishing to define the exact boundaries of the area to be added we are of opinion that two hundred acres will suffice in the general position shown in the map.

1269. Since the original lease to the company was conditioned by section 86 of the Crown Lands Ordinance, it is clear that areas in occupation by the natives were deemed to be excluded from the lease, and there is therefore no injustice in requiring that they should be excised. But under section 31 (5) of the 1902 Ordinance the company would be justified in asking for a reduction of rent.

1270. The principal drawback of the solution recommended is that the Kasigao land will not be consolidated with the main reserve, except by a corridor. But when this area has been gazetted as native reserve, they will have an asset which could, if they desire and the Lands Trust Board and Government agree, be exchanged for other land of equal value, which could be taken from the Crown land contiguous either to the Dabida or Sagalla Reserves. But we consider that, as a Commission, we have discharged our duty if we recommend that they be given the area to which, in our opinion, they have a right. Any subsequent adjustments could more appropriately be conducted by Government without any special recommendation on our part.

1271. Since the above recommendations, together with the block additions which we shall recommend to be made to the reserve in another quarter, will completely satisfy all claims of right, we consider that no injustice will be caused to the natives if it is provided that on the completion of the surrender by the company of

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the areas specified and with their addition to the reserve all claims under section 86 should be considered to be satisfied, and the remainder of the estate pass unencumbered into the hands of the lessees.

1272. We shall now examine what further land ought to be added to the reserve in order to satisfy the claim made on the historical ground that the tribe once had the use of the land now forbidden to it, and also the general claim for more pasture land on the grounds of economic need.

Recommendations regarding Further Extensions.

1273. The District Commissioner has recommended that some twenty square miles of land comprised in the areas shown as Y1, Y2 and Y3 on the map be added to the Native Reserve on the ground that the natives have rights on them and are still in undisturbed occupation. This proposal is supported both by the local non-official Europeans and by the natives, and we recommend that these three areas be added as Native lands, Class A. We also include in our recommendation the small area of Crown land between Y3 and the Sagalla Native Reserve, since its addition would link up the Sagalla and Dabida Reserves. This is shown as Y4 on the map, and comprises approximately four square miles.

1274. The District Commissioner has also proposed, with the support of the unofficial witnesses, that the area marked "Z" amounting to approximately 160 square miles, be added to the Native Reserve. It is not denied that there is and always has been a considerable amount of native occupation in that part of the area which is adjacent to the hills, and the District Commissioner points out that the addition he proposed would not only include existing native occupation, but would provide adequate opportunity for future expansion. Although large parts of this area are fly-infested, parts are also suitable for pasturing cattle and could be used for this purpose, thus enabling the people to acquire more stock.

1275. Notwithstanding that the proposal has been put forward unanimously, we hesitate to recommend so large an extension definitely as native reserve. The claims of right include the valleys and some distance into the plains, and we consider that a general extension of the boundary of the reserve to embrace that part of the area Z which is marked Z/1 on the map would satisfy all such claims. This land we recommend to be added as Class A. It would mean a general advancement of the line by an average distance of approximately two miles and embrace approximately 41 square miles. The remainder of area Z (i.e. that part of it which is marked Z/2 on the map) we recommend to be added as provisional native reserve under Class B 2 and to be converted progressively into B 1, if the natives clear it of bush in the fly-infested parts and exterminate the fly. This land is approximately 119 square miles.

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Effect of the
Recommendations regarding
the Dabida
Native
Reserve.

1276. The effect of these recommendations, if accepted, will be that two hundred square miles would be added to the Dabida Native Reserve, if we include both the area recommended to be added provisionally and also the area round Sembe Hill to be reserved for the Kasigao. The items are as shown below :—

Recommended to be added as Native Reserve, Class A.

	Square miles (approximately)
Wundanyi Estate	2
Area marked W	3
Area marked X	11
Area marked Y1, Y2 and Y3 ...	20
Area marked Y4	4
Area marked Z1	41
	81

*Recommended to be added as Provisional
Native Reserve.*

119

Total ...

 200 square miles

1277. If the whole area, including the provisional block, be taken into account, the reserve would be almost exactly doubled. If the provisional area be left out of account, the addition, inclusive of the area recommended for the Kasigao, amounts to an increase of the present Dabida Reserve by 40½ per cent, and a reduction of the population density to 165 to the square mile. This would still be a high figure, and justifies the provisional extension of a further 119 square miles being made permanent, if the natives prove their need of it by conducting a vigorous campaign to destroy the tsetse fly.

1278. The only losses to be set off against these gains is that the Teita and Kasigao would cease to have any rights in land on the remaining area of the Teita Concessions or elsewhere outside the reserve boundaries.

1279. There still remain two minor matters for discussion in respect of the Dabida Native Reserve.

Minor
Adjustment
of Boundary
near Voi
River Bridge.

1280. A minor boundary adjustment is suggested near Voi River Bridge, by which the Native Reserve will lose less than two acres, and gain a strip amounting to about sixty-five acres. This adjustment has been approved by Executive Council, and only awaits the legalization of a method by which such exchanges can be effected. The adjustment is recommended.

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1281. During our visit to Voi native witnesses complained that the Kedai Fibre Estate is diverting water from a stream in the Native Reserve, and that the quantity left in the stream does not permit of irrigation of native *shambas*.

Native Claim
in Respect of
the Kedai.

1282. At our request the Director of Public Works investigated the matter and it was discovered that there were considerable irregularities. The company's permit was invalid, the water was being drawn from a stream without any authority at all, and the company apparently issued orders to the natives not to use the stream for irrigation.

1283. The Director of Public Works has proposed a settlement to which the District Commissioner has agreed. They consider that their proposal will provide an equitable division of water between the company and the natives.

1284. The Sagalla Native Reserve comprises 82 square miles with a population of 3,987 persons, giving a density of 48.6 to the square mile. In our opinion the reserve is amply sufficient for its inhabitants, and no evidence in a contrary sense has been offered.

Proposed
Extension of
the Sagalla
Native
Reserve.

1285. Nevertheless an application has been made to extend the boundaries to Maungu Station so as to include Maungu Hill in the reserve.

1286. Thinking that such an extension might possibly offer a solution to the thorny problem of the Kasigao, we requested the District Commissioner to investigate the possibilities, and he inspected the area in company with the agricultural officer for the Coast Province. Their report, which is printed with the evidence, shows clearly that the area between Sagalla and Maungu is waterless, while Maungu itself has no permanent water supply. It would therefore be useless for the Kasigao. They recommend, however, that Maungu Hill should be made native reserve, because it includes a fair proportion of arable land, capable of being developed by natives but unlikely on account of the lack of water to prove attractive for any industrial enterprise.

While we accept the report generally, we cannot recommend that the area be gazetted native reserve, but we see no objection to permission to cultivate being granted on temporary licence or lease.

1287. A small adjustment is necessary on the boundary between the Sagalla Native Reserve and the British East Africa Corporation's estate at Voi, due to the Voi River, which is the gazetted boundary, having altered its course during recent years. A give-and-take boundary has been agreed upon by all parties, but it cannot be gazetted as there is no legal machinery to cover the give-and-take. The adjustment is recommended.

Adjustment of
Boundary
between
Sagalla Native
Reserve and
Voi Sisal
Estate.

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Native
Reserves of
the Digo
District other
than the
Nyika Native
Reserve.

1288. Seventeen small native reserves, comprising 77 square miles are grouped under the somewhat cumbrous title of "Native Reserves in the Digo District other than the Nyika Native Reserve." The eight smallest of them contain only 573 acres altogether, or an average of 72 acres each, and yet they are, quaintly enough, proclaimed as reserves for ever for the use and benefit of the native tribes of the Colony for which they have respectively been reserved.

1289. The history of these reservations is as follows. In 1915 the East African Estates, Limited, obtained a lease from the Crown of 250,000 acres, subsequently reduced to 100,000 acres. Under the terms of the Ordinance land in the actual occupation of natives at the time of the issue of the lease was deemed to be excluded.

1290. At the request of the East African Estates and for general convenience the Surveyor General caused areas to be demarcated to correspond as closely as could be ascertained with the areas over which the native rights existed, and they were included in the gazettment of native reserves in 1926.

1291. The boundaries gazetted have not been observed by the natives, but they have spread themselves out over much wider areas and are cultivating and grazing their goats indiscriminately inside or outside the reserves according to their individual preference.

1292. In such circumstances it would be idle to attempt to give population-densities, but it is beyond question that some of these reserves, notably Pungu-Mzichenda and Waa-Mzichenda, are becoming very congested. This is not because of natural increase in the population but because of the attractive influence exerted by Mombasa in drawing population from the main reserves into these isolated fragments which are in closer proximity to the town.

1293. The Digo Local Native Council has submitted a petition to the Governor requesting an extension of these reserves.

We do not consider that any good case can be made out for extending them. The fact that Digo natives leave their own (South Nyika) reserve and crowd into the coast strip provides no adequate reason for Government to approach the East African Estates with a view to buying any more land for the use of such natives. But if the natives of these reserves or any of them wish to obtain more land, we see no reason why any individual who desires to do so should not negotiate with the East African Estates for a lease, or why any group of such natives should not form themselves into a corporate body and apply collectively. We do not think that a lease on tribal lines is to be recommended, because we think that tribal tenure in the coastal strip is already anomalous and that the area so occupied should not be extended without very good reason.

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1294. There is a piece of commonage, six hundred acres in extent, adjoining the Pungu-Mzichenda Native Reserve. It was reserved originally as grazing commonage and as land where natives might gather palm leaves for making baskets, but huts have now been built on it and it is being treated by the natives as if it were native reserve for all purposes.

Commonage
adjoining the
Pungu-
Mzichenda
Reserve.

1295. There seems to be some difference of opinion between the Pungu natives and the natives living at Likoni as to whether the land is reserved more especially for the one group or the other, and both are at present using it. Since all are Digo natives, we recommend that the land be included in the Pungu-Mzichenda Native Reserve, which is part of the Digo country although detached from the main block. The question of private rights in it should be settled in accordance with native law and custom, the Provincial Commissioner taking such administrative steps as may be necessary to safeguard the interests of the Likoni people.

1296. This recommendation may appear to be at variance with the other recommendation which we have made, namely, that native reserves in the coastal strip should not be extended without good cause. But we consider that in this case good cause exists, since the area recommended to be added is already, to all intents and purposes, native reserve, and it is advisable that the position should be regularized in this manner.

1297. The plains between the Pokomo country to the west of the Tana River are inhabited by Galla tribes who originally came from Abyssinia. These Galla, though once numerous, are now only some five or six thousand strong and are nomadic pastoralists. They roam over the whole of these plains as far as the borders of the Kitui District. Although this area is loosely known as Galla country, no reserve has been set apart for their use. Since the density in which they inhabit the land is under one to the square mile, it would not be practicable to make a reserve for them, but we recommend that this land should be treated on the same footing as we have recommended for the Northern Frontier Province and Turkana.

The Galla.

1298. We have now concluded our examination of the specific claims of the various native reserves of the Coast Province. There is one other claim in respect of the coast hinterland which ought perhaps to be mentioned, if only because of the trouble to which the applicant has put himself in presenting his case. After tracing the history of his tribe, the Wakwavi, for some two hundred years past, the applicant, one Mahommed bin Uweki Shoo, comes to the point of his narrative, which is that he himself, though born as a slave on the Coast, is actually the heir of the chief of the tribe, and he claims in his own right all the land over which the tribe is alleged

The Claim of
Mohammed
bin Uweki
Shoo.

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by him to have held sway when at the zenith of its power. This includes a large part of the Masai and Kamba Reserves, the whole of the Taveta, Dabida and Sagalla Reserves, most of the South Nyika Reserve, the whole of Kilimanjaro and the Chagga country and Moshi. The claimant himself admits that the tribe had already lost its power and nearly the whole of its territory before the British Government appeared; his father had been deposed by a rival headman and his mother had been sold as a slave.

The story, which stands at pp. 2540-2551 of the Evidence, is not without interest as a narrative, but the claim is clearly insupportable and it is amazing that it should have been seriously put forward. It illustrates the complete inability, which we have noticed in several places, to distinguish between a claim to have exercised sovereign power and a claim to the proprietorship of land.

A General
Recommendation
regarding
the Reserves
of the Coast
Province.

1299. We recommend that all the native reserves of the Coast Province, with the exception of the North Pokomo Native Reserve, be proclaimed collectively as one reserve to be known as the Coast Province Native Reserve, although the component units are territorially disconnected. The object of this recommendation is to facilitate interpenetration between tribes and generally to permit more freedom of movement in whatever direction economic advantage may suggest. The rights of occupant tribes would be adequately safeguarded. Land tenure among each tribe and the recognition of private rights in land would be based upon native law and custom, as it is or may become, modified by natural process or by rule; and each administrative district would have its own local land board.

1300. The argument in favour of combining the native reserves into fewer and larger units will be more fully discussed in the third part of the Report.

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(b) THE TEN MILE STRIP.

1301. We have not, fortunately, to deal with all the land problems of the Coast belt, but only with such as either fall directly within our terms of reference or which have to be reviewed because they might in some way affect or qualify our general recommendations.

Scope of the Chapter.

1302. A conception which will be found to underlie and permeate the whole of our Report is that the land in the Colony can be considered in the following classes: land to be occupied tribally by natives as native lands, or as native reserves, or as land held generally for native tribes (e.g. Turkana); secondly, land in which Europeans have a special privilege (the European Highlands); thirdly, land to be set apart for alienation on lease primarily to natives (native leasehold areas); and lastly the residue.

1303. In respect of the residue we are making the general recommendation, as we have already stated in section 25 of the Report and shall state again in more detail below (section 1471), that there should be no racial restrictions. By far the most important area to which this recommendation would apply is the Coast, and it is necessary to consider how far the position is already compromised, and whether perhaps some modification may be necessary in our recommendation in order to bring it into more practical relation with existing facts.

A General Recommendation that no Racial Privilege should apply.

1304. In so far as existing titles are concerned there are only a few points in which the question of racial privilege might be deemed to arise:—

Exceptions or Special Cases.

(1) We are informed that there are a few leases issued to Europeans on Mombasa Island with restrictive clauses against non-Europeans. Our general recommendation made above should not be read as prejudicing this issue or similar issues in any manner whatever.

(2) Large areas of land were granted to the Mazrui Arabs originally as blocks of land vested in the Mazrui lands trust board. Although this arrangement originally created a racial privilege over a large extent of the Coast in favour of Mazrui Arabs, practically the whole of these lands have now passed into the private ownership of individual Arabs, who are entitled to sell or lease them without distinction of race.

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(3) There are some areas, even outside the native reserves, where a special native privilege applies. Such are Pumwani, Mijomboni, Mida, Tezo, Mavueni, and Miritini, comprising altogether 13,698 acres. These cases will be reviewed below.

(4) At Mpekatoni, south-west of Lamu, there is a special reserve for the Arab and Swahili people of Lamu, 5,600 acres in extent. There is also the Arab and African Reserve at Wassin.

(5) There are certain commonages near Mombasa, the Likoni and other commonages, the original intention of which appears from the contemporary records to have been that they should be reserved exclusively for native use.

1305. The above list shows instances in which some degree of racial qualification is discernible. The list is probably not exhaustive, but, especially having regard to the fact that a Coast Land Titles Committee is now sitting, we do not conceive that more is required of us than that we should make clear our general attitude in matters where some point of principle is involved. No more need be written regarding the other categories in the list, but some observations are required in regard to Nos. 3, 4 and 5, namely, the six special native reserves, the Mpekatoni and Wassin Arab and African communal reserves, and the Likoni commonage.

1306. The six special reserves comprise one reserve for ex-slaves, one for Mahaji or converts to Islam, and four for detribalized natives.

The Tezo
Ex-Slave
Reserve.

1307. The present position in regard to the Tezo ex-slave reserve is that large numbers of Nyika natives have drifted into it and are inhabiting it exactly as if it were part of their own native reserve, while the ex-slaves are a dying and dwindling population. Such descendants as they may have will not desire a perpetual reminder of their origin or wish to be surrounded exclusively by other ex-slaves or their descendants, and no objection to the incursion of the Nyika has been raised. On the other hand the position ought to be regularized, and we do not think that Government should acquiesce in what is virtually an unauthorized extension by the Nyika of their reserve.

1308. We recommend that, when opportunity permits, private leasehold title should be issued to the occupants either individually or on group tenure such as we shall recommend for native leasehold areas in a later part of our Report (sections 1880-1935 below). We consider that there should be special clauses to regulate succession, and that there should be no restrictions on transfer between races.

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1309. The reserve at Mida was declared to be for the benefit of Mahaji or converts to Islam, but a reservation exclusively to that class can hardly have been contemplated, and has certainly never been attempted. The Mida Reserve is, in effect, practically indistinguishable from a native reserve except that most of the inhabitants are Mohammedans. We recommend the issue of private leasehold titles with no restrictions on transfer between races.

**The Mahaji
Reserve at
Mida.**

1310. The reserves for detribalized natives at Pumwani, Mijomboni, Mavueni, and Miritini comprise 11,177 acres. There is no accepted test of detribalization and in practice any native is allowed to go and live in these areas, which are, in effect, communal reserves. The perpetuation of such a form of tenure is clearly not advisable on the Coast, and we recommend that the present residents be granted private leasehold title to land sufficient for their needs. If there is a residue of land left over, we recommend, in view of the purpose for which the land was originally granted that it be leased to suitable applicants who are detribalized natives, but that there be no restriction on transfer, which should be allowed irrespectively of race or class.

**The Four
Reserves for
Detribalized
Natives.**

1311. In 1925, 5,600 acres of land were set aside at Mpekatoni near Lamu in order that leases might be issued to the "people of Lamu, Arab and Swahili" at the discretion of the District Commissioner. No lease or licence has in fact been issued, and we recommend that the reservation now cease.

**The Mpekatoni
and Wassin
Reservations.**

1312. The extent of the Wassin Arab and African communal reserve is 46 square miles, and the circumstances of its creation are as follows: According to tradition the first Arab pioneers arrived at Wassin Island under the leadership of one, Seyid Sheikh, about seven generations ago. At first they cultivated only on this island but later extended their farms to the Shimoni peninsula, where they found a small tribe of up-country people already settled. This tribe, known locally as the Segeju, is said to be of Kikuyu origin. All of their members have embraced Islam and considerable inter-marriage with the Arabs has taken place.

**The Wassin
Arab and
African
Communal
Reserve.**

1313. In 1926 the Provincial Commissioner and the District Commissioner, Digo, evolved the idea of a communal reserve in which the Arabs and Segeju could reside and farm in perpetuity. Their recommendation was accepted by Government and the reserve was gazetted in December, 1929.

1314. In view of certain complaints Mr. Justice Dickinson was appointed a Commissioner to hold a judicial inquiry and recommended that within the area of the communal reserve the Arab

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claimants should be permitted to bring their individual claims for registration of their homes and farms before the Recorder of Titles, and he added :—

“It appears to me that, if the communal reserve is preserved for the whole area, and the individual properties of the Arabs, which are adjudicated in their favour, are delimited out of it, no injury will occur to the Arabs’ neighbours, whilst at the same time the Arab rights which they have acquired will be protected by registration.”

1315. The position would appear to be that when the individual homesteads of the Arab claimants have been defined and excluded from the area, the reserve will be a common.

1316. We do not wish to make any criticism of the general policy of the Arab and African communal reserve. The experiment was made on the recommendation of the provincial administration and must be given a chance of success, however slender it may appear. But we recommend strongly that the communal nature of the reservation should not be so interpreted as to preclude the creation and recognition of private rights. We have recommended in respect of the native reserves up-country that an advance to a more private form of tenure ought to be encouraged. In the absence of such rights not only is a proper economic development impossible, but the soil will inevitably suffer deterioration through misuse. The conception of a native reserve as a “common” has already become an anachronism among the more advanced of the up-country tribes, and should certainly not be tolerated on the Coast among people who claim to have reached a more advanced degree of civilization.

1317. We recommend therefore that, as opportunity occurs, an equitable scheme should be formulated by which the land should, in process of time, pass into private ownership. It may be found necessary at first, for protective purposes, to restrict the issues of titles and the transfer of holdings to Wassin Arabs and Segeju only, but in course of time the need for this restriction should disappear and transfer be permitted without restriction of race or tribe.

**The Likoni
Commonage.**

1318. The Likoni commonage was originally reserved for Digo natives living in the neighbourhood on the condition that it should be used by them for depasturing goats and for the collection of leaves for making baskets. The natives themselves lived on adjoining land which was afterwards conveyed to them in private title, but the commonage remained common. The next development was that most of them sold their land, in some cases to natives and in others to non-natives, and opinions differ as to who are the persons who now have rights on the commonage. The point has been

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brought to our notice, but we are not aware that any practical difficulty has yet arisen in respect of native rights, such as might call for a recommendation from this Commission.

1319. Since some degree of racial privilege exists in the above cases, and since we propose no immediate or drastic reversal of policy, it follows that our general recommendation that there should be no racial discrimination on the Coast in respect of the holding and transfer of land must be qualified in a certain degree. But these areas are so small in comparison to the whole Coast that they would not affect its validity as a general principle.

Comment on
the above
Cases.

1320. There are however a few claims which, if admitted, would modify the situation profoundly. These are such communal claims as those of the twelve tribes and of the Lamu Arabs.

1321. Memoranda have been submitted on behalf of the "Three Tribes" and on behalf of the "Twelve Tribes", which actually include nine other tribes and the three tribes. These are the remnants of ancient immigrant tribes who came to the country around Mombasa at some date before the later historical wave of Arab immigration. Their claims will be found at pp. 2561-2567, 2573-2578 of the printed evidence, and amount to a request that this Commission should recommend to Government "that existing Crown lands on mainland south be established as communal reserve land for the three tribes and the agricultural lands on mainland north be alienated to the nine tribes in the same way." The context makes clear that the claim to the north extends from Mombasa to Takaungu and also embraces the ancient settlements of Kilifi, Gedde, and Malindi; the claim to the south is understood to extend as far as Tiwi, the total of both claims being approximately forty miles by ten miles.

The Claim of
the Twelve
Tribes.

1322. In 1914 the Mombasa-Takaungu block and the Mombasa-Tiwi block were gazetted as areas in respect of which all land claims must be submitted for adjudication within six months. The claim in question was not submitted, possibly because a claim by the Three Tribes to land on Mombasa Island had already been adjudicated by the Recorder of Titles and had been rejected, a judgment which had subsequently been upheld by the Court of Appeal (Law Reports, Vol. V, 1913-1914). Whether this was the reason or not, no claim to land on the mainland was made on behalf either of the Three Tribes or the Nine Tribes or the two in combination. It is not now competent for the applicants to submit it except as a late claim cognizable at the discretion of the Governor in Council. We see no reason to recommend that such discretion be exercised.

1323. It appeared to us necessary to speak plainly to these people, and, after we had heard the evidence of Khamis Mohamed

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bin Hamis and Sudi bin Ali Bashir, the two representatives of the Afro-Asian Association, who appeared before us in support of the claim, the Chairman made the following announcement :—

“It seems to us that this is really a claim that you are sovereigns of the country and that the Sultan of Zanzibar has no claim to it, and that the rights he gave to the Government were not of any value.”

“It is quite clear that the individuals and villages who considered they had claims have put forward their claims, which have been listened to by the Court whose decision was obtained, and they had the right of appeal to the High Court and also to the Privy Council. This is merely a claim that we should recognize you as the rulers of this part of the country and the Sultan's flag should be pulled down . . .”

“It seems to me that you have had a very good opportunity of putting forward all your claims and having them carefully considered. There is no reason and no right on our part to go behind the decision of these Courts.”

The Claim of
the Lamu
Arabs.
The Area
under Claim.

1324. The three Arab tribes of Lamu, known as the Yumbe, Famao, and Kinamite, in association with the Arab tribes of Shella, Matondoni, and Kipungani and the Swahili people of Lamu Island have addressed to us a joint memorandum laying claim to some 275 square miles of territory lying wholly within the area formerly known as the Witu Sultanate. The claimants, of whom none live in the area claimed, are willing to admit a reservation of rights in favour of the freed slaves and other persons who are resident there to the number of about 2,546 (the figure given by the Senior Commissioner in 1924). The total number of adult male Arabs in 1923 was 288 according to the Poll Tax register, so that the claim works out roughly at a square mile each, even if all the Arabs of Lamu are associated in the claim.

Dates at which
Applications
were made.

1325. The land which they claim is land on which they have never lived and never intend to live; but they claim that they formerly cultivated it by means of slave labour.

1326. The Lands Titles Ordinance was applied to the Witu Sultanate in 1915 and opportunity was given to all persons to lodge claims to any rights in the land which they might believe themselves to have. With few exceptions, those Arabs who had *shambas* there lodged their claims, which were duly adjudicated. No communal claim was made until 1919, when the period allowed for the lodging of claims had already expired.

1327. On being informed that this claim was late, the applicants asked leave to file it out of time. This request being refused by the Acting Land Officer, they addressed a petition to the Acting

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Governor in August, 1919, and sanction was given for late applications to be filed. But it appears that, in fact, no communal claim was filed, the Provincial Commissioner having given orders that each separate claim must be supported by a separate affidavit.

1323. It would hardly seem from the records that the Arabs could have any cause of complaint in this regard, since Mr. Isaac, Provincial Commissioner, has left it on record that at one time he offered to treat with these Arabs on communal lines, and they refused on the ground that "everyone owned their *shambas* and there was no joint tenure." Moreover, on a subsequent inquiry held before the Provincial Commissioner in 1924, the Chief Kathi gave his opinion that communal rights could not be claimed but that "all that could be claimed would be the *shambas* actually cultivated by individuals and with definite boundaries."

1329. Whatever the reason may be no claim on communal lines was in fact lodged with the Recorder of Titles in 1919.

1330. The next date of significance is 1921. In July of that year a Government notice was published in the *Official Gazette* stating that all applications for land west of Lamu and north of the Witu Sultanate must be made within six months from August, 1921. The District Commissioner rightly informed the applicants that the notice did not refer to them, the land under claim being *within* the Witu Sultanate and not north of it.

1331. Two years later (July, 1923) the claimants sent a further petition to the Governor claiming that the District Commissioner had advised them wrongly in 1921. The Governor then ruled that the land in question should not be alienated by grant or concession, since the Arabs were wrongly informed that they need not submit claims.

A
Departmental
Inquiry.

1332. This resulted in the Provincial Commissioner, Coast, the late Mr. A. J. Maclean, being instructed to hold a departmental inquiry. His finding has been printed with the evidence (pp. 2623-2625) and was recorded in his letter No. 1425 of 25th September, 1924, in which the following passage occurs:—

"Asked as to why, in view of the arguments made, they did not apply for title to this land as tribal or communal land at the same time as they lodged their individual claims, they pleaded ignorance, but stated that as soon as they found out their mistake they had never ceased to petition each Governor in turn."

This alleged ignorance is hard to reconcile with the statement which we have quoted by Mr. Isaac.

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1333. The letter proceeds, a little later : "The District Commissioner was perfectly correct in informing the claimants that the notice in the gazette referred to (i.e. Government Notice 841 of 1921) did not affect the claims to any land within the Sultanate of Witu . . . The claimants therefore were *not* wrongly informed, and consequently such information cannot be used as the basis of an excuse for not lodging applications in time. As I have previously shown, the Land Titles Ordinance was applied to the Sultanate of Witu in 1915 and it was not until four years later that the claimants prepared their claim. In my opinion the applicants can prove no legal or moral rights over the land claimed and no case has been made out for the consideration of their claims under section 17 (2) of the Land Titles Ordinance, 1908, by His Excellency the Governor in Council. This opinion is borne out by every officer who has in the past dealt with this claim. I advocate, however, that a portion of the land referred to should be set apart as a reserve for the people of Lamu for cultivation purposes. By people of Lamu I include all classes and not any particular family or tribe."

Argument
regarding
Late Admission
of Claim.

1334. The point for our decision is whether we ought to recommend that the Governor's sanction should be given for the admission of this application out of time for adjudication in the Land Titles Court. Such a course could be justified either on formal grounds, if it could be shown that for some cause, such as wrong advice given by a District Commissioner, the claimants have not had a proper opportunity of presenting their claim; or on general grounds of equity, if we considered that the grounds of the claim were so strong as to demand consideration, even though the time for making claims is past.

1335. We consider that the Provincial Commissioner's inquiry disposes of the first point, and we cannot find any cause for supposing that the applicants did not have ample opportunity of presenting their claim at the proper time, if they had desired to do so. It is moreover noteworthy that the present claim is not the same as that which was put forward in 1919 and 1923 and before the Provincial Commissioner in 1924. That claim was by the Lamu Arab tribes only and was opposed before the Provincial Commissioner by the Arabs of Shella, who are now associated with the claimants in the present claim, which has now been presented for the first time in this form, a matter of eighteen years too late.

1336. On grounds of equity after a careful perusal of the evidence before us, we cannot find any ground for recommending that the application be entertained. Those individuals who had *shamba* claims brought them and had them adjudicated, and if there are still any *shamba* claims which have not yet been brought or have not yet been adjudicated we recommend that late applications

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should be allowed and that the claims should be finally heard and determined. But this communal claim does not only comprise all the individual claims but extends also over all the bush and waste land making an area of 275 square miles. This we hold to be at the disposal of the Crown. This communal claim could have been made in 1915, but was not made, and we see no reason for recommending that it should be entertained at this date.

1337. We have already dealt, in section 1311 above, with the recommendation made by Mr. Maclean in the last paragraph of his finding.

1338. It is certain that other claims to land on the Coast, both individual and communal, will be lodged, and there are many such claims which await adjudication. There are some areas where claims have been adjudicated and other areas where they have not, and it is necessary to make the position clear by a short description of the Land Titles Ordinance and the action which has been taken under it.

Other Claims
on the Coast.

1339. In 1908, with the two-fold object of securing the rights of private owners and of determining the position and extent of Crown land, the Land Titles Ordinance was enacted. This Ordinance set up a Land Titles Court to hear land claims and to issue freehold titles. The period within which claims might be lodged was limited and all land unclaimed at the expiry of that period was declared Crown land, with a provision that late claims to portions of such Crown land were to be admissible under certain conditions. The Ordinance was applicable by proclamation to any area and has been applied at various times to the whole Coastal strip.

The
Land Titles
Ordinance.

1340. The survey and adjudication of claims proceeded continuously, first in Mombasa District and then further afield, and by 1922 practically all claims had been adjudicated in Mombasa Island and District; in the area between Mombasa District and Takaungu, except Takaungu township; in the area between Kilifi and the Sabaki river, except Malindi township; in the area about the mouth of the Tana River; and in the Witu Sultanate. The work of adjudication was proceeding north of the Sabaki River and at Lamu, but claims south of Mombasa in Digo District had not yet been touched.

1341. In that year the economic situation necessitated the cessation of Coast title work then in progress, and it has not been possible to resume it since except on a much reduced scale.

We are so much impressed with the necessity of finding out once and for all what lands are at the disposal of the Crown and what lands are private, that we recommend that the Office of Recorder of Titles be resumed, and that the work of adjudication should proceed energetically.

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Recommendations regarding Communal Claims, and Communal Tenure generally.

1343. Our general recommendation in regard to communal claims is that they should not be admitted for adjudication out of time in areas in which the adjudication of claims has already been completed, but that in areas still awaiting adjudication communal applications should be admissible on the same footing as private claims and should be entitled to the same consideration.

1344. In the case of waste or public lands which are at the disposal of the Crown by virtue of the Agreement dated 14th December, 1895, between Great Britain and Zanzibar, we recommend that communal reserves, being generally uneconomic, should not be created unless very special reasons exist. We would not, however, debar the possibility of leases of land on group or family tenure, provided that a clear method of inheritance and succession exists, and that adequate safeguards are provided against the land becoming excessively sub-divided or fragmented.

1345. While most of the natives living on the Coast belong to tribes in the hinterland for which reserves have been proclaimed, there are some, especially the descendants of imported slaves, who have no such reserves in Kenya. They are truly detribalized and live, for the most part, as tenants on Crown or private land or in the six special "reserves" to which we have already referred. The most practical form of assistance which can be given to such natives is not the creation of reserves, but the safeguarding of the rights of tenants, where such safeguards are found to be necessary, and the simplification of the procedure for the acquisition and transfer of land, so that the cost of acquiring small private holdings may not be unduly swelled by charges for survey and registration.

The Bajun, however, are a special case. They inhabit principally the mainland to the north of Lamu, and to some extent may be said to be living in a tribal condition, although they have no reserve of their own. At present they have plenty of land to cultivate and it hardly seems likely that any practical difficulty will arise for many years. In these circumstances we need make no more definite recommendation than that the administrative officers concerned should study the position which will become clearer when private claims in this area have been adjudicated and it is known what land is at the disposal of the Crown. As in other parts of the Coast we consider that the end in view should be the emergence of a regularized, though not elaborate, system of private tenure either on individual or group lines, but with a clear method of succession. We are satisfied that the perpetuation of tribal conditions on the Coast is undesirable and would be detrimental to progress.

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1343. Our recommendation regarding private claims is that the work of adjudication be pushed forward. Whether or not the present Land Titles Ordinance should first be amended is a matter which we leave in the hands of the Coast Land Titles Committee which is now sitting. There is certainly room for criticism of the present ordinance on the grounds that the value of private lands in remote areas is not such as to justify the elaborate and expensive machinery provided to govern such matters as the issue of private title or the transfer or succession of property. The cost of survey alone is prohibitive.

Recommendations regarding Private Claims and Private Tenure generally.

1347. It is clear to us that the work of registering small private claims is necessarily expensive, and will not be worth the money if within a few years of the issue of the title the land becomes subdivided into minute fragments through inheritance. Experience on the Tana River suggests that in the course of a generation some holdings become hopelessly complicated in respect of the determination of the shares of co-heirs, a condition of affairs which is exceedingly detrimental to successful cultivation. In various parts of our Report we have occasion to allude to the dangers of uneconomic subdivision and fragmentation, and these are matters which we would especially commend to the attention of the Committee. In our opinion this is a question which cannot be shelved, but, after a period of preliminary study, regulations ought to be made and enforced. In land which is at the disposal of the Crown, as apart from land which may be claimed as of right, we recommend that no lease should be granted without adequate safeguards against unauthorized subdivision.

Whether private tenure for natives should be conceived preferably on the lines of individual tenure or of group or family tenure is a matter for special study. We offer some observations on this question in the third part of the Report (sections 1398-1409, 1650, 1880-1935).

1348. Wakf lands are special cases, and have special problems of their own, with which we have not considered it necessary to concern ourselves. They should be understood to be excluded from the scope of our recommendations.

Wakf Lands.

1349. The special facilities which exist for natives in the Coast strip in respect of land are, first, the seventeen native reserves in Digo District, totalling 77 square miles; secondly, the six special native areas mentioned in section 1304 (3) above and certain commonages set apart for natives. Thirdly, there are extensive lands on which natives live under a kind of permissive tenure, as for instance the land inhabited by the Bajun to the north of Lamu.

Facilities for Natives in Respect of Land.

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1350. There are at present very few natives who hold land on title, but our recommendations that on the Coast generally natives should have the same rights as other races to take up land introduces no new principle. The facility already exists, and it is reasonable to suppose that, as the natives advance in civilization, they will be more ready to avail themselves of it.

Native
Tenants on
the Coast
Mainland.

1351. The great mass of the natives on the Coast are not living on their own land or on land especially reserved to them, but are simply occupying land on sufferance where they can find a place and where nobody objects. Some of this land is Crown land, some private land, and some is land awaiting adjudication.

1352. The Arab and other owners of private land follow the usual Mahommedan and local custom of "lending" their land to native tenants for cultivation or building purposes; and near the towns and villages the land is kept under close cultivation by this means. Such tenancy is terminable at will, but the native tenant is entitled to reap his crop and remove the material of his house.

1353. The present position on the mainland is satisfactory, because as a general rule the relation between landlord and tenant is on a sentimental rather than a commercial basis. Many ex-slaves and freedmen of Arab landlords continue to live on the estates of their late masters, and a sense of protection on the one hand and of obligation on the other still subsists to some extent. But the tenant is liable to be turned off at any time without compensation after reaping his crop. We have found this condition of affairs to be unsatisfactory in parts of Kikuyu, and we suspect that it will also prove unsatisfactory on the Coast, when industrialization and the density of population increase.

Native
Tenants on
Mombasa
Island.

1354. Very few natives own land in Mombasa Island, but there are large numbers who own houses. Most of these are built on land owned by Arabs. In the absence of special conditions to the contrary in a written agreement the tenant is regarded, in Mohammedan law, as the absolute owner of his building as distinct from the land on which it stands. It is not customary to charge a rent for the right of occupation; upon receiving notice to quit the tenant has the right to remove his house but is not entitled to compensation. The tenant-owner of a house may, and frequently does, mortgage or sell his house, the tenancy of the land being transferred to the purchaser in case of sale. Deeds recording mortgages or sales are generally prepared in Arabic and are registered under the Registration of Documents Ordinance.

1355. Native houses in Mombasa are not confined to land owned by Arabs, but in some cases have been built on land owned

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by Europeans or Indians, or on land at the disposal of the Crown. The native householders are tenants at will, and, although the agreements under which they occupy the land are sometimes registered, no rights of leasehold can be conferred for a period exceeding one year.

1356. After the Town Planning Scheme had been enacted in 1926 rapid development of the island followed, and it became necessary to consider housing schemes for natives.

1357. Development on the lines of a native location on Government land was impracticable, both for financial reasons and other causes. A plot at Makupa had been set aside for such a purpose, but it was soon discovered that natives preferred to make their own arrangements, and the scheme to form a native location was allowed to lapse.

1358. The problem which then confronted the Town Planning Authority was how adequate housing for natives could be provided. Essential conditions to be fulfilled were that the scheme should not call for a heavy Government subsidy and so pauperize the natives; that the natives should be encouraged to build and own their own houses; that the houses must be up to a standard which would satisfy the Health Authority without being beyond the resources of the native; that the terms to the landlord should be sufficiently attractive, so that land would be available; and finally that the remuneration which the landlord should receive by way of rent should not be more than the native could reasonably be expected to pay.

1359. The solution found was a standard pattern lay-out, providing sub-plots for native houses, which were required to be constructed in accordance with a standard design. A certain degree of latitude was allowed to avoid excessive uniformity and prevent hardship, and the lay-outs were designed to allow of open spaces and adequate access. It is a condition of approval of such village lay-outs that the landowner shall not sell any sub-plot or sub-lease it for a period exceeding a year.

1360. The solution has proved acceptable to the landowners who have no particular desire to sell or lease for long periods, realizing that in present circumstances tenancy at will gives an immediate and adequate return, and that such tenancy can be terminated whenever more advantageous methods of disposing of their land present themselves.

1361. One may be disposed to doubt whether the system is equally satisfactory to the tenant. It may seem a harsh provision

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that, while the house which he builds must conform to a certain standard, he may be evicted at the end of only one year. His principal recourse in such circumstances is to mortgage the house, a condition of affairs which is perhaps unlikely to be permanently satisfactory.

1362. On the other hand it has to be remembered that natives in Mombasa are not forced to take up these sub-plots. If they have the means they can buy land, and build for themselves; or there are still many places, though they will become fewer, where they may go on living as tenants at will under the old conditions; or they may become lodgers in the houses of others; or they may leave the island and live more cheaply on the mainland, as many do, crossing each morning to their work. In view of all these alternatives it is some tribute to the success of the scheme that these sub-plots are being freely taken up, and many standard pattern houses have been built, especially in the area between Makupa road and the railway.

1363. In all the circumstances we consider that the arrangements made for the housing of the native population at Mombasa are satisfactory at present. There has, of necessity, to be an element of impermanence in any such scheme, because, if the town fulfills its promise of growth there is every indication that the operation of economic laws will force the less well-to-do element of the population, of whatever race, to seek houses on the mainland where the ground-rents will be less high. It is necessary to bear in mind that the island only contains some three thousand odd acres.

But although the present position may be accounted satisfactory it is probable that additional security for tenants will be required, as industrialization increases. While we understand that at present the arrangements are mutually satisfactory to landlord and tenant, and that very few evictions take place, it is conceivable that a sudden large increase in land values would cause a profound change. We therefore recommend a careful investigation of the position with a view to ascertaining whether additional security for tenants is required, and, if so, on what lines it could be provided.

**Lodging
Houses.**

1364. It would be a mistake to consider the problem of accommodation for natives in a town such as Mombasa solely in terms of private houses. The bulk of the native population resident in the island are lodgers, and it may well happen that in the future it will be the correct development and control of lodging houses rather than private dwellings that will chiefly engage the attention of the authorities.

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1365. One of the most striking features of the Coast, especially in the neighbourhood of Mombasa, is the ease with which a comparatively dense population distributes itself. This is the more remarkable in view of the high percentage which must be accounted a floating population, including some thousands of natives engaged temporarily on contracts and an almost equally large number of *Kibarua* or day-labourers. It is a most remarkable circumstance that the population, composed in a great measure of *detrribalized* natives is able to come and go with so little disturbance. And it is a just conclusion that the Coast has at present good reason to be content with its arrangements for the accommodation of natives.

Distribution
of the
Population.

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PART III

THE PROBLEMS COMPREHENSIVELY CONSIDERED

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CHAPTER I.

THE GENERAL CONDITIONS OBTAINING IN THE NATIVE RESERVES IN RESPECT OF THE USE OF LAND.

1368. A large proportion of our Report hitherto has been devoted to describing the conditions in the individual native reserves of each province. But at this stage we think that it will be of advantage to offer a general survey of somewhat wider scope. Our recommendations, both general and particular, will then be seen in proper perspective in the relation which they bear to the problem as a whole.

Purpose of the Chapter.

1369. It is obvious that we cannot usefully make recommendations concerning the present and future needs of the natives, unless we first make clear how they use the land which they have already, and what are the general conditions obtaining in the reserves in respect of the density and distribution of the population, the degree of attainment in agricultural and pastoral skill, and the problems which are arising in respect of the tenure of land. Here and there, in passing, we shall make suggestions for amelioration, but a comprehensive statement of our recommendations regarding tribal lands and the manner in which they should be held and used will be reserved for discussion in the chapter which follows.

Present and Future Needs.

1370. All the evidence before us points to a high rate of increase among the native population, and we cannot discern any good reason for expecting any slackening of the rate within the next two decades. It appears more likely that it will increase as a result of the improved conditions of life. It has been suggested to us that the later marriages, which may be expected to occur as a result of mission teaching, and possibly also as a concomitant of a higher standard of life, may cause decline in the rate of increase. But having regard to the fact that at present marriages commonly occur before the age of maturity is fully reached, we are not convinced that a retardation by a year or two, which is all that can be expected, would have that result. For any decrease which there may be in the birth-rate will probably be more than counteracted by an increase in the survival-rate both among children and among mothers.

Rate of Population Increase.

1371. Since it appears that the population is likely to go on increasing rapidly, and since there are practical limits to the extension of boundaries, the necessity is clear for a policy and programme which will aim at an increase of skill in the use of land, so that the same land can be made to support a larger population. This

Need for Increased Skill.

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does not only mean that the people should be educated in better agricultural and pastoral methods, but demands that they should also be able to distribute themselves to the best advantage, a requirement which in some of its implications postulates a skilful Government not less than a skilful people.

Evidence of
Maldistribution of
Population.

1372. The need for a better distribution and the difficulty of accomplishing it will at once be apparent from the following figures of areas and distribution, which are based on the Surveyor General's analysis dated 31st December, 1932, and the Chief Native Commissioner's estimate of population for the same year, as shown in his circular of 2nd June, 1933. The official figures do not always specify, in the case of mixed districts, how many of the population reside in the native reserve and how many in the settled area. Where official returns have been incomplete in this respect, our calculation has been based on other evidence, and particularly the memoranda submitted to us by District Commissioners.

1373. The official estimate for the total native population is 3,007,645. The total area of the Colony is 219,730 square miles (exclusive of water area), and the density over all is therefore a little under 14 to the square mile. But the distribution is extremely uneven.

(i) Very
Sparsely
Inhabited
Areas.

1374. Nearly two-thirds of the total area is inhabited at an average density of less than one to the square mile. The total area of unsurveyed Crown land in the Northern Frontier Province, Turkana, the "Extension from Uganda", and the parts of the Kitui and Tana River Districts which are not native reserves, amounts to 138,942 square miles, or 63 per cent of the whole, and there are considerable uninhabited stretches in other parts of the Colony. None of the above areas are included in the native reserves.

(ii) The
Native
Reserves.

1375. The native reserves are 48,149 square miles, or approximately 22 per cent of the whole area of the Colony. The native population inhabiting them is approximately 2,587,000, or 86 per cent of the whole, and the density is 54 to the square mile.

1376. Of this area, the three Kikuyu and the three Kavirondo districts comprise between them 8,856 square miles. The population is 1,518,578, or approximately half the entire population of the country, living in two areas the total of which is approximately one twenty-fifth part of the whole land of the country. Such a statement is apt to be misleading unless all the factors are taken into account, and it is a juster comparison to compare these areas with the rest of the gazetted reserves. It is then found that the three Kavirondo and the three Kikuyu reserves comprise 18 per

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cent of the whole area of the native reserves; their population comprises 59 per cent of the whole native reserve population, and the density is 171 to the square mile, as against an average of 27 for the rest of the reserves.

1377. The greatest contrast to be found between neighbouring tribes is the case of the Kikuyu and the Masai. The area of the three Kikuyu reserves as gazetted (i.e. without Mwea) is 1,726 square miles, inhabited at an average density of 283 to the square mile, while Masai, as gazetted, is 14,797 square miles, inhabited at an average density of 3 to the square mile. And yet the Masai country contains very extensive areas of good arable land as well as enormous areas of pasture.

1378. The remainder of the Colony is 32,639 square miles. The native population inhabiting it is approximately 296,000, and the density 9 to the square mile. This land comprises :—

(iii) The rest of the Colony.

	<i>Square Miles.</i>
Alienated land	10,345
Surveyed for alienation	1,530
Forest reserves	4,284
Crown land unsurveyed	15,649
Coast freehold	273
Reserves for townships and other public purposes	558

1379. When every allowance has been made for differences in fertility and other factors which affect the matter, the conclusion cannot be avoided that a notable degree of maldistribution exists. To say this is not to impute any blame. Government, generally speaking, set tribal boundaries around the areas where the tribes were found, and few of them have legitimate complaint on the score of constriction. But the mere fixation of boundaries and the prevention of inter-tribal wars, necessary actions though they were, have had the effect of introducing rigid barriers which had no parallel in native experience. In former times, a powerful tribe was able to amass much live stock and roam over a wide territory. Women also would be won in raids and would help to recruit the strength of the tribe. When a change of fortune came and its power started to decline, it would be liable to lose its cattle or most of them through the attacks of more powerful neighbours, who distrained not only upon live stock but on women also, and under duress the tribe would find it prudent to constrict its boundaries. By this rough-and-ready method, the stock and the land and the population were redistributed.

Causes of the present Maldistribution.

1380. But with the immunity conferred by the protection of Government, vast herds of live stock have grown up behind the tribal frontiers, and the human population is also increasing. And

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it is probably the case that, where the population is thickest, it is increasing most rapidly, because of the better services in the way of roads and markets, health services, and other amenities with which it is likely to be provided.

Methods of
securing
better
distribution.

1381. Drastic remedies for securing a better distribution are not open to us. To take surplus territory from one tribe and give it to another tribe is a step only justifiable in extremities, which have not arisen and may never arise. To effect a similar result by a process of inter-tribal lease may be more practicable, and we would not rule it out as a method should circumstances ever require it. But if carried out without the goodwill of both tribes, it might cause an estrangement between them and tend to prevent peaceful interpenetration. It is therefore a method requiring great caution in its application. Leases of extension areas outside the reserves are also a possibility for which we have provided.

1382. But the possibilities of a tribe extending its territory by lease of contiguous land are very limited. While inter-tribal leases would be difficult to negotiate, leases in other areas would often be ruled out by the consideration that there is no contiguous unalienated Crown land available.

1383. In its Report the Hilton-Young Commission has stated (page 347) in connexion with the question of land being taken from one tribe and added to another:—

“The decision to be taken in such case would be a matter of first class importance, demanding the direct consideration of Government, which could not divest itself of sole responsibility; and it does not seem fitting that the Government should delegate the authority for such a purpose to a Board of the nature which it is proposed to set up under the Bill.”

1384. We concur with the above opinion and consider that the trust vested in the Board should relate to the integrity of the native lands as a whole. Tribal frontiers inside proclaimed native reserves would be the concern of Government. Adequate security, both to the tribe at large and to the right-holders in particular, would be found by a provision that the system of land tenure in any tribal area should be built up on the basis of its own native customs.

1385. The following passage from Professor E. H. Brooke's *History of Native Policy in South Africa* (page 57) is apposite:—

“The ten years after the Report of the Commission of 1852-53 were devoted mainly to quiet administration. But steps were being taken . . . towards the legal securing of the Location Lands to the tribes inhabiting them. The first scheme . . . was the granting of separate titles for each tribal

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location, the land to be alienated by the Crown to separate boards of trustees. Such a trust was created by indenture of the 27th May, 1858, in respect of the tribe (the Amatuli) occupying the Umnini location; under the name of the Umnini Trust it still exists. . . . But on maturer consideration it was decided not to proceed with the scheme, which would have taken from Government the power of reallocating land between tribes."

1386. It is with the same purpose of avoiding too permanent an entail that we shall recommend that future extensions made to native reserves from time to time on economic grounds should not be permanently guaranteed, but should be added by means of lease on terms which would provide an adequate security, subject to reasonable conditions of user and development.

1387. We have seen that the possibilities of inter-tribal adjustments are very limited, but the chances are more hopeful for a penetration by individuals. By this means, surplus members of a congested tribe may be able to find some relief by going to live as tenants in the territory of another tribe, into which they will eventually be absorbed. But it is clear that even this method has its limits, since no tribe will be willing to receive strangers in such numbers as to threaten its own integrity, and one is forced back to the conclusion that, although these facilities may be very useful, the primary task of every tribe is to develop its own territory to its own advantage.

1388. "No substantial improvement in agriculture can be effected unless the cultivator has the will to achieve a better standard of living. . . . Of all the factors making for prosperous agriculture, the most important is the outlook of the peasant himself." (Report of the Royal Commission on Agriculture in India, 1928.)

Conditions
essential to a
better
Development
of the
Reserves.

1389. Education and demonstration are being undertaken to that end, and a good deal of progress is already to be noticed in the more agricultural districts. The model small holding at the Scott Agricultural Laboratories is a striking example, and is the more to be admired because it teaches the native that, if he wants a higher standard of life, he must work for it, and shows him how to do so. Demonstrations of model housing and the like should always be accompanied by a practical lesson of this sort; otherwise they merely teach the native to be discontented with his lot without showing him the means of improvement. The first condition of progress in the reserves is that the natives should be brought to realize that a higher standard is within their grasp if they will work to attain it and be prepared to accept guidance.

ON PRESENT CONDITIONS IN NATIVE RESERVES

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Conditions in
the more
Densely
Populated
Reserves.

1390. In considering the present degree of attainment, we shall first review briefly the conditions obtaining among those tribes whose land is inhabited at a density which is beginning to cause problems of land tenure to appear. The principal examples are the three Kikuyu districts; the three Kavirondo districts; to some extent, the Teita district; and some of the small reserves on the Coast. Their distinctive feature is that any comprehensive programme of improvement in agricultural or pastoral practice must be dependent on considerations of the way in which the land is held and occupied.

1391. As a general statement of the degree of achievement, it may be said that natives, who formerly cultivated for subsistence, now consume only about half of what they grow, and sell the rest. Seed-raising and demonstration have effected in some places a considerable improvement in the yield of crops per acre, but our tour of these reserves has revealed to us undoubted evidence of soil deterioration, ascribable in a large measure to a failure on the part of the natives to dig deep enough or to manure. And this deterioration, if it continues unchecked, will counteract the progress which is being made in other directions, and must ultimately decrease the yield.

1392. We have had widely divergent evidence on this point. Major Grogan told us :—

“ With regard to the Kavirondo country, I was very much struck by the obvious denudation and waste of land that is going on there. You can see it very well from the air. The land practically goes pink over large areas, and wise people leave it alone.”

And the picture which he drew of certain parts of the Kikuyu country was equally gloomy. But the Director of Agriculture stated specifically that he was “not prepared to subscribe to such an alarmist view”, which he considered to be very greatly exaggerated. He stated :—

“ I should say there is no evidence of a decreasing yield of crops grown. In fact, there is a great deal of evidence of improvement in the yield, due to better cultivation in the case of some natives and due to the use of better seed in the case of large numbers of natives. Speaking broadly, I should say there is no evidence of deterioration in the thirteen years I have known the reserves.”

Speaking of the Kikuyu Reserves, he said :—

“ Generally speaking, I see no evidence of the soil being worn out, and I do not think there is any reason to be unduly apprehensive about the future. The natives themselves are

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improving their methods and adopting practices which the officers of my Department recommend. . . . Native methods should not be readily condemned, and as a matter of fact they return to the soil a large amount of nitrogen and humus in the course of a year. Such variations in the native method as are being brought about by the efforts of the Department of Agriculture are along the lines of not changing the system in so far as the variation of crops grown is concerned, but rather to get the same crops grown in a better fashion and in proper rotation."

Mr. Wolfe, Acting Director of Agriculture, said :—

" I am certainly of opinion that in the closely settled parts of the native reserves where shifting cultivation is at an end or coming to an end, there is going to be soil exhaustion, and sooner or later there are going to be serious difficulties unless a remedy is found."

Mr. C. W. Hobley, C.M.G., speaking of the Teita Reserve, stated in evidence :—

" I visited Teita at intervals during my service, and I was greatly struck by the progressive destruction of the cultivable area due to soil erosion during a period of thirty years, entirely caused by the unfortunate methods employed by the natives."

Mr. Hobley retired in 1921, and it would appear that the methods employed have to some extent improved in the course of the last twelve years.

Dr. D. Bell, who has been stationed among the Teita for more than three years, states in his evidence :—

" The Teita as a people are very progressive. They manure their *shambas*, and irrigate them."

and the District Commissioner stated in his memorandum :—

" The Teita are quick to follow a good example, and if profitable agriculture is demonstrated before their eyes, they readily follow suit."

1393. The teaching of the agricultural officers is having good effect, and there are already numbers of advanced natives whose superior skill may be expected to communicate itself to the rest. In some districts there are already in existence standing sub-committees of the Native Councils which deal with agricultural subjects, while encouraging experiments are being made, especially in Kikuyu, in the direction of co-operative marketing.

1394. In the areas which we now have under review—Kavirondo, Kikuyu, Teita—we see no reason to take any alarmist view on the question of soil deterioration either through mistaken

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methods of crop production or through excessive accumulations of live stock. While the natives suffer from failure to dig down or to manure sufficiently, there is in other respects much to be commended in their methods, and the "static rotation" which they achieve by means of interplanting is far preferable to the persistent planting of a single crop, which has characterized some forms of industrial agriculture in European areas. But it cannot be denied that serious deterioration of the soil exists in many parts of these reserves, and the problem will demand close attention by the agricultural officers.

1395. Overstocking does not exist in these districts in so marked a degree as to call for special comment, but there are evidences of it in Ndeiya, and in some other parts of Kikuyu; this was particularly stressed by Dr. Leakey (Evidence, pp. 688-692).

1396. As to the numbers of stock in Kikuyu, we quote the following from the evidence of Senior Chief Koinange, one of the more progressive of the Kikuyu chiefs:—

"All the counts that are made of the sheep and stock by the Agricultural Department are purely imaginary, because we keep back the true number which we possess, for fear that we shall be told that we have got too many."

1397. In our opinion, this remark applies to the reserves in general, except for a few cases in which actual counts have been made by the Veterinary Department in connexion with inoculation or as a check on estimated numbers; in such cases it has almost invariably been found that the estimates are well below the actual numbers.

**Problems of
Land Tenure
in these
Areas.**

1398. The question of distribution and the correct method of holding land is the outstanding problem in these areas. The population is already living, in some locations, at a density at which a man may be prevented by pressure of his neighbours from extending the area of his cultivation without fragmenting it, and, while this may have the advantage of inducing a more intensive cultivation it is not to be expected that native custom will readily accommodate itself or provide a means of solving problems of local congestion which are outside the range of tribal experience. If subdivision and fragmentation are allowed to continue unchecked, holdings threaten to become uneconomic. On the other hand, if subdivision is prevented, a landless class may appear at a time when alternative means of employment cannot readily be found in the reserve, and at least a temporary limit has been reached to the capacity of the European area to accommodate more labourers.

1399. But for the successful prosecution of agriculture it is by no means necessary that every man should be a landowner. In

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fact, it is quite certain that advanced agriculture cannot be conducted on those lines, and it is worth while to mention that in Denmark, the most agricultural of all European countries, only two-fifths of the population are directly employed in agriculture. Like other businesses, agriculture requires organization, and even with the limited degree of organization which is possible to natives in the present state of their development, there should be many who are employed in the derivative industries of carting and marketing and in preparing produce for the market. Then again, there are industries which are less directly derived, such as the profession of the schoolmaster, or the judicial elder, or the tribal policeman, which, having in themselves no connexion with agriculture, are nevertheless supported by funds derived from that source.

1400. There have always been industries of a kind in tribal life, and the professions of the soothsayer, the witch-doctor and the smith, and the makers of stools, pipes, instruments, etc., are examples. The fostering of village industries and the growth of social service centres have added materially to the list. There are already considerable numbers of native shopkeepers and traders and a few millers; many owners of ploughs and carts, ready to plough on shares or to transport produce for a share of the proceeds; a few carpenters and masons, and one or two natives who have started brickworks, or who dig sand or murrum; and here and there a native turned nurseryman and raising seedling trees for sale. Besides the ordinary *muhoi*, or tenant, there are a few labour-tenants working for hire, and many "herdsmen" who undertake to fatten stock in return for a share of the increase.

1401. But it cannot be said that any of these classes are wholly supported by the professions which they have adopted, and the food of the family is supplied from the gardens which the women cultivate. Broadly speaking, there are as yet no natives in the reserves who are not in a large measure supported by the tillage of the soil.

1402. The point is important because of the bearing which it has on the problem of subdivision of holdings. In civilized countries the soil is not regarded as the only means of livelihood, and co-heirs on an overcrowded farm are willing to allow one of their number to buy the others out and seek alternative employment elsewhere. Such fluidity is unattainable among Kenya natives at this stage, both because of the undeveloped state of industries and because of the habits and customs of the people.

1403. Consequently, if the present tendencies continue, problems of local congestion threaten to become acute, and attention is invited to the various memoranda which stand in evidence on the

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subject. The necessity for building up on an agricultural foundation and fostering derivative industries lies at the root of the matter. Until that has been done, it seems unlikely that direct steps taken to protect holdings against uneconomic subdivision could have much effect.

1404. Fragmentation, as apart from subdivision, is a special problem of its own, and is probably susceptible of a more direct attack. The matter has been covered sufficiently in the part of our Report which deals with the Kikuyu (sections 507-516 above), and we also have it in evidence that a parallel state of affairs exists or is threatened in parts of Kavirondo.

1405. Security for tenants is another matter which requires attention, and, as far as Kikuyu is concerned, we record our definite opinion, with which the administrative officers of the province have expressed their concurrence, that more security is necessary.

1406. Congestion is not yet more than a local phenomenon, existing in a few parts of these reserves. As has just been indicated, a greater variety of employment would tend by itself to relieve congestion in respect of the number of cultivators on the land. But there are also measures which would tend to distribute the cultivators to better advantage. Firstly, the better provision of roads and local markets and trading centres may induce a slackening of the economic pull towards the main centres. Secondly, the introduction of higher priced crops or an improvement in the quality of crops may enable an economic use to be made of land which is now left derelict because of its distance from markets or from other causes. Thirdly, the distinction drawn between tenants and right-holders must not differentiate against tenants to such an extent that right-holders will be unwilling to leave congested areas and take up land as tenants in more sparsely occupied areas elsewhere.

1407. Most of these points have already been covered in the part of our Report which deals with the Kikuyu, and we shall not go further into detail here. But we wish to emphasize our opinion that the problem is essentially one of educating the people in the better use of their land. It is a matter which the Administration must undertake with the co-operation of all Departments working in the reserves. The work does not begin and end with the education of the individual; the tribal authorities have also to be instructed. Pressure of population and accumulation of live stock are creating problems which can no longer be solved by the rough-and-ready methods of tribalism, which included fighting and the periodic incidence of famine and disease among the machinery of correction. New remedies will have to be devised, and the crucial point is whether native custom can be adapted to embrace them. Some

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modifications will come about spontaneously by the practices of some of the more advanced natives being copied by others until they become general.

1408. But history does not lead us to expect that the land problems of any people can be settled by a spontaneous evolution of custom, and some direction by authority is necessary. Very naturally and properly, the tribal elders and native councils will be reluctant to enter upon innovations of which they have no experience, and will turn a deaf ear to advice of which they have no means of judging the value. We do not subscribe to the doctrine that in such circumstances Government should never intervene; we hold that Government should take and use the powers to make rules. While the system of land tenure should be based on native custom, it should be built up by forethought and planning, and regulated by rule. Nobody has ever disputed the propriety of Government making rules to protect the soil against exhaustion or to provide adequate safeguards for economic crop production or to order the destruction of noxious weeds, and we can see no reason why, after adequate study, Government should not regard itself as equally free to guard against the still more insidious, because less obvious, evils which arise from an uneconomic fragmentation of the land or from an unjust method of dealing with tenants or from any other maladjustment in the system of land tenure.

1409. In the case of the Kikuyu and possibly the Teita, the block additions which we have recommended may prove to be suitable places in which any projected modifications might be tried experimentally before they are applied to any part of the established native reserve.

1410. We now turn to the consideration of the conditions in the less densely populated native reserves. They range in density from the Machakos Akamba at 110 to the square mile to the Masai at about 3—the Embu, Nandi, and Lumbwa being among the more thickly populated.

The less
Densely
Populated
Reserves.

1411. The proclivity to accumulate stock without regard to economic advantage is manifest among nearly all these tribes.

1412. Attempts have been made to persuade them to habits of mixed farming, not entirely without success. Even the Masai have begun, in a very small way, to grow lucerne for their stock, and are also showing a dawning interest in growing crops for their own food requirements. The Lumbwa and the Nandi are making some progress, but it is not to be supposed that any of these tribes will ever be otherwise than predominantly pastoral for a great many years. The most hopeful method is to make them better pastoralists and at the same time to persuade them to methods of mixed farming.

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1413. Among the Nandi, Lumbwa, Cherangani, and a few others, the results of overstocking are not yet apparent, and it is possible that, at the moment, these reserves are not overstocked. But the same factors which lead to useless accumulations of live stock are present here as elsewhere, namely bride price and the native systems of barter and exchange, under which account is kept not only of the animals exchanged but of their progeny also. But, since the time factor is not yet pressing among these tribes, there is every hope that a programme of education in better methods of animal husbandry would achieve good results.

1414. The Kamba of Machakos District are suffering from reckless overstocking in the past, and their position to-day is most difficult. Their reserve has deteriorated to such an extent that, until it has been reconditioned, it cannot carry even the numbers which the people might reasonably require, but ultimately, if proper treatment is applied, it should be able to do so.

1415. It is encouraging to note that the Kamba themselves are showing some appreciation of the situation and a desire to cope with it, although efforts in this direction fall far short of the need. More especially in the Machakos District, the Kamba have largely extended the area of their cultivated land, and have also made creditable efforts through their Native Councils to plant trees on the brows and slopes of hills, and thereby check off-scouring of the hillsides. To the same end, they have also been persuaded to attempt some hedging or ditching along contour lines. Rudimentary though these efforts may be, they are hopeful signs. And we also had it in evidence that fines have been inflicted by tribunal elders for the offences of cutting down trees so that goats may eat the leaves and for stripping the bark off trees to make ropes.

1416. In respect of water conservation, their efforts have been equally praiseworthy, and many excellent dams have been made both in the Machakos and Kitui Districts. Their example might well be followed in other reserves.

1417. Nevertheless, the Machakos Native Reserve is deteriorating rapidly through overstocking, and while it is admitted that educational methods are ultimately the best, we fear that, if reliance is placed on education alone, better methods of animal husbandry will not be learnt until the damage is irreparable.

1418. When we turn to the reserves of the Suk, the Njemps, and the Samburu, the position is one of almost unrelieved gloom. The people appear to show absolutely no regard for the ruination which is going on before their eyes, but devote their lives to amassing vast herds of uneconomic live stock, which are fast turning their country into a desert.

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1419. A full description of the position and recommendations for remedies are given in a special chapter on the problem created by overstocking (Chapter X of this Part). It is not therefore necessary to discuss the question here, but, because that chapter concentrates mainly on the two factors of the live stock and the land, it may be well in this place to add a note on the human aspect and consider the native viewpoint. For it will not be denied that, whatever emergency measures may be needed, the only ultimate solution of the problem lies in the willingness of the native himself to co-operate in his own salvation.

1420. The educational end in view may be easily stated. Half the lesson will have been learnt as soon as the average native is ready to take one good cow in exchange for two bad cows, or, in other words, when he has regard to the quality rather than the quantity of his cattle. The other half will be learnt when he realizes that, in order to have good cattle, he must take steps to protect his pasture.

1421. Clearly the first thing to be done is to eliminate the special reasons which make it hard for the natives to learn these lessons, and the first of them is the peculiar position which cattle and goats occupy in native social life. We may notice four instances :—

- (a) When return of bride-price or any other debt payable in live stock is claimed, the return is on the basis of a beast for a beast, although there is generally a tariff whereby (in Kamba and Kikuyu) one cow = two bulls = ten goats. With certain trifling exceptions, no distinction is made between a good beast and a bad one, and if the price fixed for a wife is, for instance, four cows and a bull, almost any four cows will do, and no lesser number, however good, would be accepted as quittance.
- (b) If a cow received in marriage price dies before it has calved, the hide and the meat may be returned, and another cow may be demanded. It is therefore natural that natives should regard even barren cows as worth something more than their apparent value.
- (c) Most cases in the native courts relate to cattle, and the court fees are assessed *ad valorem* on the basis of a tariff under which a cow has a fixed value. This gives a kind of official support to the view that one cow is as good as another.
- (d) Very large numbers of cattle are held in some form of trust, so that, in many cases, a man would not feel himself justified in killing a beast, even if he wishes to do so, without a family gathering to sanction it.

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1422. It would be hard to describe the attitude of a native towards his cattle. It does not amount to veneration, but cattle or goats play a part in most ceremonial transactions, and perhaps acquire a kind of reflected sanctity. Such at least was the opinion of the South African Economic Commission, 1930-32 (*cf.* section 33), and instances could be quoted to support such a view. But we are on surer ground if we say that the native custom, frequently exemplified, by which a man who parts with property retains a certain interest in that property even after it has left him, creates so many interests and contingent interests that it is generally difficult for a man to dispose of cattle without prolonged consultation. But the freer circulation of money and the institution of markets are already having their effect, and these various restrictions and inhibitions are not so strong as they were.

1423. It is obvious that we cannot, as a Commission, say how far or how quickly it may be possible to modify these customs and practices without imposing an undue strain on native institutions. We merely call attention to them as explaining, in some degree, the reluctance of the natives to esteem their cattle by quality rather than by quantity.

1424. The more the open market can be made available for the native stock, the more quickly these artificial values of native custom will be counteracted.

General
Summary of
Conditions
obtaining in
the Reserves.

1425. The purpose with which this chapter is written does not oblige us to describe the particular problems of every reserve. The essential points have now been considered in order, namely, the population, the density, distribution and degree of advancement, and the uses to which the land has been put. We have seen that the density over all is by no means in excess of the capacity of the land, and there should be ample room for future expansion for many years, provided that the people are instructed in a more economic use of the land and that a better distribution of population is secured. At present, a notable degree of maldistribution exists, and we have a position which is almost a paradox. While the population over all is sparse, a majority of the natives are living in areas which are heavily populated. Consequently, the Administration is already grappling with problems of local congestion in certain districts. The various additions which we propose to be made to native reserves will help in some degree to ease the situation. But a remedy promising more permanent results is to be found in keeping the assets in land as liquid as circumstances and tribal security permit, so that any tendency of the population to redistribute itself by a natural flow may not be unduly impeded in its operation. More important even than this is that the population should learn to make a correct use of the land which it has.

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1426. We therefore proceeded to the consideration of the essential problems as they presented themselves, firstly in the more heavily populated reserves, and afterwards in those which are more sparsely occupied, and a somewhat significant distinction was found.

1427. The most densely populated territory is that of the Kikuyu, and there we found that the crucial problem was neither primarily agricultural nor pastoral, but concerns itself with the system on which the land is held. The second problem is agricultural, and has to do with the fact that increased population has largely prevented the practice of shifting cultivation, while the people have hardly yet acquired the skill necessary for a more concentrated method without exhaustion of the soil. We also noticed a need for a better organization of marketing, and observed that creditable efforts in that direction are already being made. Problems of overstocking in the reserve proper are not yet serious, but may become so.

1428. In Kavirondo and Teita, the two populations next in order of density, problems of land holding have also begun to appear, but not to the same extent. The primary requisite of development is an increase in agricultural skill and a greater production. As with the Kikuyu, problems connected with live stock are as yet of a minor order.

1429. But when we come to the less populous areas, we find that overstocking is almost universal (except where it is prevented by "fly" or some similar cause), and is such as to outweigh all other problems in gravity.

1430. In these areas there has been a progressive degeneration of cattle and land, threatening a degeneration of the people. When the natives can be taught to forsake their semi-religious attitude towards cattle and regard them as items in the food supply, which requires to be augmented by other kinds of diet, they will begin to grow in numbers and in skill. The need for a variation of diet will be increasingly appreciated. Following on that, the lesson will be learnt that it may be expedient to plant special stock-feed, as is done in the case of goats by the Kikuyu.

1431. On a comprehensive view of the whole position, we find good grounds for believing that the native population is advancing in numbers and capacity in all but a very few of the reserves, and we are encouraged to believe that this advance, as it proceeds, will lead to a more economic outlook. But this is not the case in districts such as Kamasia, which have become so devastated as to create the fear that the population will not be able to maintain itself even at its existing density, and, since the process is cumulative in its effect,

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may ultimately be threatened with extinction. The imperative necessity for a policy and programme of reconditioning, which must include the reduction of live stock, is therefore obvious. It is with no wish to disparage the valuable work which has already been done by administration and departmental officers and by Native Councils in this field that we record our opinion that the urgency of the problem calls for still more intensive effort.

1432. In our survey of Kikuyu problems in Part I of this Report, we indicated that in our opinion the problem of internal development and control is of an importance and intricacy which demands the attention of all departments operating in the native reserves, co-ordinated under the general direction of the Provincial Commissioner. The present more general survey of all the reserves reinforces that conclusion.

CHAPTER II.

THE GENERAL LINES PROPOSED FOR THE SOLUTION OF THE NATIVE LAND PROBLEM.

1433. The land in which we recommend that the natives should have facilities has already been classified at section 22 of the Report. For ease of reference, we repeat the tabulation below, and we have added more descriptive detail.

Class A.—The present native reserves, plus the additions which we have recommended to be made as Class A, minus such areas as we have recommended to be surrendered in cases of exchange. These lands should rank fully as native reserves.

Class B.—Land recommended to be added to the native reserves, but under special conditions. These would be added to fulfil certain economic needs, and we shall allude to them as Native Reserves Class B.

This class is subdivided into B1 and B2, the former being land which we recommend to be added because the tribe appears likely to have permanent need of it, and the latter being land which we recommend to be added to fulfil a need which appears to be of a more temporary character.

Class C.—Land to be set apart for alienation on lease to natives, whether as groups, families or individuals. Provided that leases to non-natives should be allowed and even encouraged in cases in which the Land Board agrees that such a course would be of more benefit to native interests generally than that the land should be leased directly to natives; and provided that, while there is ample room, short leases may be granted to non-natives for any purpose with the consent of the Board.

Class D.—Areas in which natives will have equal rights with other races in respect of the acquisition of land.

Note.—Classes A and B relate to land which will be native reserves, and schedules will be given at the end of this chapter. Classes C and D relate to facilities on a non-tribal basis. A schedule of lands recommended to be Class C and a general description of lands under Class D will be found in Chapter VIII.

1434. We recommend that Class A Reserves be known as **Terminology.** Native Lands. This point is covered in further recommendations below (sections 1635-1649).

ON THE GENERAL LINES OF ACTION PROPOSED
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1435. We recommend further that Class B1 lands be known as Native Reserves, but not as Native Lands; and that Class B2 lands be known as Temporary Native Reserves. Under our recommendations, Class B land will not, as in the case of Class A land, cease to be Crown land, and we think it right that a distinction in name should emphasize the distinction in fact, between the land to which the natives have a claim on historical grounds and that which has been given to them by Government on economic grounds.

That Class C lands be known as Native Leasehold Areas.

That all the above classes of land be known comprehensively as Native Areas.

1436. If our recommendations are adopted, these terms will be in common use and be readily understood. Meanwhile, for the purposes of this Report, it will be best if, as a general rule, we keep to the designations A, B1, B2, and C, and refer to them as Native Reserves.

Certain
Governing
Considerations.

1437. There are certain governing considerations of an importance which demands attention in this place; otherwise the general nature of our proposals will not be clear.

Security for
Native Lands,
Class "A".

1438. Native lands, Class A, can be considered as a whole, or they can be conceived in their component parts as particular native lands reserved for particular native tribes.

1439. Regarding them as a whole, we recommend that the duties to be discharged by the Board under the trust should be: (i) to maintain the integrity of the boundaries against any alteration except such as may lawfully be made under the Ordinance as amended by any action which Government takes upon our Report; (ii) to make representations to the Governor or the Secretary of State, if the area comprised within the boundaries is not being "administered, managed, developed and controlled" for the use and benefit of the natives as provided in the Ordinance. But the actual administration, management, development and control would devolve as a separate trust upon Government directly, though the Board would have certain powers of intervention and veto for protective purposes. We shall recommend that the Lands Trust Ordinance be amended in this sense and shall give supporting argument.

1440. We shall further recommend, with supporting argument, that Native Reserves Class A cease to be Crown lands and be styled Native Lands, subject to adequate safeguards to protect the rights and powers of Government.

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1441. The trust which the Board would have to discharge, in respect of the boundaries, might conceivably involve their protection even against the Government of Kenya. Therefore it must be protected against the contingency that Government might amend the Ordinance at will and thereby alter the conditions of the trust. We recommend therefore that an Order in Council be sought to protect against amendment those clauses of the Ordinance which : (i) declare the external boundaries of Native Reserves, Class A ; and (ii) define the conditions on which such boundaries may be altered or amended.

1442. We now turn to the other aspect of the matter, and regard these areas in their component parts. As the Ordinance is at present constituted, these components are the lands stated to be "respectively reserved" to particular tribes. Such a reservation "for ever" seems to us unwise. We are fully alive to the value of fostering tribal loyalties and protecting tribal institutions, but when we look at the matter purely from the standpoint of land, too rigid an entail ought to be avoided, and the terms of the trust should not be such as to deprive Government of the power to make adjustments, however rarely it may be that the necessity for them will arise.

(ii) In Respect
of the
Component
Units.

1443. In this connexion, we would again refer to the passage from Professor E. H. Brook's *History of Native Policy in South Africa*, which is quoted in section 1385.

1444. But we need not look as far as South Africa for examples of the embarrassments which a permanent entail of specific lands to specific tribes may cause ; there is no lack of them in Kenya. It is right to be warned and to seek for a method which will reserve to Government an ultimate power of adjustment, while preserving to tribes a full and adequate security. Regarding the reserves as at present gazetted, we find that some of them follow tribal boundaries, and some do not. Some tribes have more than one reserve, as for instance the Kikuyu, for whom three separate, though contiguous, native reserves have been gazetted ; while some reserves are reserved to more than one tribe without any attempt to define where the tribal boundaries occur. An instance of this kind is the South Kavirondo Native Reserve, which contains at least three distinct tribes. After hearing evidence, we are satisfied that these divisions are neither logical nor convenient. We find that it is better to keep the units as large as possible, only setting boundaries where some consideration of tribal security or administrative convenience appears to demand it.

1445. There is no absolute necessity that our land units should correspond with administrative or political boundaries. Nevertheless, a general correspondence is dictated both by convenience and

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also by the fact that administrative boundaries often delimit tribal frontiers. When several tribes, having the same or a similar system of land tenure, are included in the same province, we consider that they should be grouped in the same land unit, unless there is some strong reason to the contrary.

1446. All that such a grouping would connote is that the customs regarding the tenure of land existing within the group are the same or similar and could be developed along similar lines; although it is possible that when modifications are introduced by rule, it might sometimes be found that special rules might have to be applied to some special area within the unit in order to suit the requirements of some particular sub-tribe, group or section. But there is no need to regard either the units themselves or the separate groups within the units as exclusively reserved to their inhabitants, and reasonable interpenetration is desirable. Any special customs (as they are or as they may become, either through spontaneous evolution or as a result of modifications) would govern the situation in regard to the admission of natives of other groups or tribes, and provide a reasonable security and a sufficient degree of exclusive possession for the occupant tribe.

1447. A full list of the units which we recommend for gazette-ment in place of the existing reserves as now gazetted will be found in Table I at the end of this chapter, but the following two instances may be given here as examples :—

- (a) The reserves now separately gazetted as the Kiambu, Fort Hall, Nyeri (together with the Embu and Meru) Native Reserves, along with Class A additions as recommended, to be gazetted as a single unit reserved as Native Lands of the Kikuyu tribe.
- (b) The reserves now separately gazetted as the Machakos Native Reserve and the Kitui Native Reserve, along with Class A additions as recommended, to be gazetted as a single unit as Native Lands of the Kamba tribe.

1448. Two points clearly arise in regard to these lands. Firstly, how, if at all, can their external boundaries be altered? And secondly, how are these large units to be subdivided between the several tribes and groups resident in them?

1449. We have to consider the contingency that the tribe or tribes inhabiting one of these units might be diminished in numbers, while the tribe or tribes inhabiting a neighbouring unit might increase. In extreme cases, an alteration of boundary might be required, and in so important a matter Government would have to retain a full responsibility and could not resign the function to a Board. On the other hand, we think that the Board ought to be

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able to express an opinion. We therefore recommend that if Government should ever deem it necessary to add to the territory of one unit by diminishing the territory of another unit, the Lands Trust Board should be consulted, and the Secretary of State, if he agrees with Government, should seek an Order in Council effecting the alteration.

1450. In the case of minor adjustments of such boundaries, we consider that it should be within the power of the Governor to effect the necessary alterations.

1451. In regard to adjustments which may have to be made between the boundaries of the tribes occurring in the same unit (e.g. Embu and South Nyeri), we consider that the Governor should decide. In our opinion, it is not a matter within the purview of the Lands Trust Board, because an adjustment of political boundaries does not affect private rights.

1452. Our reason for recommending that areas added to native reserves on the grounds of economic needs should be under Class B is a desire to keep the country's assets in land as fluid as possible and to ensure that the land is properly and efficiently utilized.

Security of
Class B
Lands.

1453. The rapid rise and decline in the strength of families or groups among polygamous peoples is notorious, and where the system of bride-price prevails it is likely to be still more marked. The relative strength of tribes and consequently their requirements in land may be subject to rapid fluctuation, and it will therefore not be prudent to lock up the land too rigidly against the possibility of redistribution. Therefore there must be no suggestion that, because an area of land is given to a native reserve as Class B land to satisfy an economic need, it is of necessity to be devoted to the use and benefit of the tribe for ever, but the permanency of the allocation should depend upon the duration of the need.

1454. There is another reason why the Crown should not divest itself irrevocably of its rights over such land. We cannot too strongly emphasize the need for making all such grants subject to conditions which will protect the land against misuse, and, in particular, overstocking should be prevented by a limitation of the number of stock which the area is authorized to carry.

1455. On the other hand, security must be found for the natives who occupy and develop the land. There must be no fear that it will be taken away from them without due consideration for the rights and interests of the groups which have been using it.

1456. After considering these factors, we have recommended a subdivision of Class B into Class B1 and B2, the former consisting of land which we find to be required by the tribe concerned to

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fulfil a need which is likely to be permanent; and the latter consisting of land required for some special need, which may prove to be only temporary in character. We recommend that Class B1 should be added to the reserve upon conditions, while Class B2 land should be leased to the tribe. In both cases, there should be strict conditions of conservation and use.

1457. In respect of land now proposed by us to be Class B2, we recommend a low rental—perhaps a peppercorn. In respect of any further land which it may subsequently become desirable to add to native reserves we consider that, whether they be added as Class B1 or as Class B2, rent should be charged on an economic basis.

1458. The areas now recommended to be B1 and B2 are shown in schedules attached to this chapter.

1459. Class B1 lands should, in our opinion, be under the protection of the Lands Trust Board. They should not be diminished or taken away without the consent of the Board, excepting only that an appeal should lie to the Secretary of State, who should be able, if he considers that sufficient cause exists, to override the veto of the Board. But, saving this protection, the clauses regulating the terms and conditions upon which the tenure may be terminated should not be matters embodied in the Order in Council, since it is desirable that freedom be preserved to amend such terms and conditions as convenience and the general objects in view may dictate.

1460. Leases of Class B2 land should be terminable by the Governor with the approval of the Secretary of State; provided that the Lands Trust Board should be consulted.

Class C Lands
(Native
Leasehold
Areas).

1461. We consider that Native Lands, Class C, should be set apart to be let on lease in blocks or individual plots. Rents would be paid to general revenue, but we recommend that, while they would not be definitely earmarked, a general obligation should be recognized to use them for the improvement of these areas.

1462. In recommending the provision of such areas we have in mind primarily three classes of persons for whom they would be useful:—

- (a) Advanced natives in the reserves who might be desirous of renting land which they could develop as a private holding.
- (b) Returned labour-tenants from alienated areas, who, having lived for several years away from the control of tribalism, may find it difficult to be re-accommodated in their own reserve, either through lack of room for themselves or their stock, or because a tribal life is no longer congenial.

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- (c) "Detribalized" natives who are loosely attached to towns, and who should be removed from them and offered the alternatives of going to live in the reserve with which they have most affinity, or of taking up land in these blocks, if they can afford to do so.

1463. It cannot be supposed that native life in Kenya can always be conducted on tribal lines, and gradual progress towards private tenure in the reserves, which is eminently desirable, will probably be facilitated by allowing some of the more advanced natives to gain experience in this way.

1464. We also have to envisage the possibility that whole families or groups, especially from among the landless *mbari* of whom we have heard much in the Kiambu district, may enrol themselves as corporate bodies and apply for comparatively large blocks, which they would then subdivide among themselves according to principles to be covered in the clauses of the lease, which would have to provide for a recognized method of succession and safeguard the title against excessive subdivision.

1465. But when all is said, it will still be the case, for many years to come, that the bulk of the natives require the shelter of tribal life and will prefer to remain in the reserves. We may take it as doubtful whether, in the early years of the scheme, the number of applications will be very large, but it is reasonably certain that the numbers will grow as congestion in the more populous reserves increases. We are therefore faced with the position that, if our reservations under Class C are very extensive, it may be many years before the blocks are taken up, while if they are unduly restricted they will not provide an adequate outlet for the future.

1466. It might be contended that for an increasing population no outlet could ultimately be sufficient, but we oppose to that the consideration that "C" areas are intended to provide for needs which are essentially of a transitional nature, namely, the needs of natives who are just emerging from tribalism and still require special protection. But, when in process of time natives pass that stage, they may appropriately be required to take their chance in competition with other races in "D" areas, in which land would be freely bought and sold without racial discrimination. It therefore appears to be our duty to make such provision as promises to suffice for at least one or two generations, after which Government will have to consider, in the light of experience gained, whether further extensions of "C" areas are necessary, or whether the time is ripe for allowing a free market in land in "C" and "D" areas alike.

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1467. Bearing these considerations in mind, we have proposed that blocks totalling 939 square miles, as detailed in the schedule given in section 1879 below, be set apart as "C" areas for allocation to natives on lease. But in order that this may not render idle the balance of land not immediately required, we have recommended that leases should be allowed to non-natives for any purpose which the Board considers to be in the native interest. While ordinary agricultural or grazing leases should be on a short-term basis, long-term leases might reasonably be allowed in cases where major works are to be undertaken, as, for instance, a water scheme or some scheme of large scale production which the Board agrees to be beneficial to the natives.

1468. The terms and conditions on which land in "C" areas should be made available to natives will receive careful consideration in Chapter VIII below. It will be sufficient in this place to allude to the financial consideration that, while in the initial stages it will be easy to find suitable land without much expense, in the later stages it may be found that expensive works are required before more land can be rendered suitable. It will therefore be right for Government from the outset to have regard to these potential developments, and consider how the scheme, in general, can be financed, and whether the holdings can be expected to provide a return, either directly or indirectly, for the money spent upon them.

Security for
Native Land-
Class "C".

1469. We recommend that the boundaries of the areas recommended to be Class C lands (Native Leasehold Areas) should be proclaimed under the Order in Council, so that they may not be diminished or extended without the authority of a further Order in Council, except that exchanges should be permissible, if the Board agrees. The devising of terms and conditions under which leases to natives should be granted both in general and particular cases would be a task for which Government would be responsible as a matter of internal management, and the Board would not be concerned. But no lease to a non-native should be granted without the consent of the Board, except that the Chief Native Commissioner should have power to act for the Board in minor matters to the same extent as, under our recommendation, he would have in native reserves (*see* recommendations in Chapter VI below).

Lands,
Class "D".

1470. Lands in Class D would not need to be specially proclaimed. They are all the lands in the Colony and Protectorate (other than Turkana and the Northern Frontier) which are neither recommended to be European Highlands or Native Lands, Classes A, B or C, nor already dedicated in some manner involving some degree of racial discrimination, as, for instance, the Mazrui lands on the Coast.

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1471. In all "D" areas, natives should have the same right of raking up land on lease as other persons. While it would not be fair for the Commissioner of Lands, in discriminating between applicants, to give prior consideration to natives or to any other section of the public, there would be no objection to advice being given to native applicants by the District Commissioners in the reserves, so that the applications could be put in a form in which they would be likely to be favourably regarded. It would often be found suitable for a group of natives to enrol themselves as a corporate body with perpetual succession and apply for a comparatively large block, to be administered according to terms which would be covered in the lease.

1472. Our recommendations under Classes A and B cover the present and immediate future needs of the population living in the reserves, and it is expected that instruction in better agricultural methods will enable the land to carry an increased population and so, to a large extent, solve the problems of the more distant future also. Additional facilities will be afforded by the areas set apart under "C" for alienation to natives on lease and the opportunities under "D" for the acquisition of land by natives in areas where no privilege of race exists. But lands under C and D will be found more suitable for comparatively advanced natives than for the bulk of the population, who still require the shelter of tribal life, and, since there are some reserves in which a degree of local congestion already exists, it is necessary to consider what general facilities are available or should be found for effecting a better distribution of the population in the reserves, or for effecting additions or exchanges if need should arise.

Further
Facilities.

1473. We recommend that, when the boundaries of lands in Classes A, B and C have been proclaimed, any subsequent extensions which may be required in any of these classes should be made by the Governor, subject to the approval of the Legislative Council. Such additions should normally be by lease.

Additions to
Native
Reserves.

The above paragraph is not to be read in the sense that any extensions to the land can henceforth be made on the grounds of historical right, a subject which, if our Report is accepted, should be held to be finally settled; the only additions to Class A-lands which should be contemplated are those which are incidental to exchanges or petty adjustments.

1474. We recommend that exchanges should normally be by mutual lease, the Governor being empowered to make such exchanges, subject to the consent of the Lands Trust Board and the Legislative Council; provided that the land to be leased must first

Exchanges.

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be set apart and be subject to the procedure and safeguards which we shall presently recommend (sections 1526, 1531 and 1541) to be observed before land in a native reserve can be set apart or leased.

1475. In exceptional cases, if it is desired that the exchange be on a more permanent basis, we recommend that, if the local natives have been consulted and if the Local Native Council, the Local Land Board, the Lands Trust Board, the Governor and the Legislative Council all agree, then it should be possible for the exchange to be made by process of permanent exclusion and compensatory addition.

1476. Before any land in a native reserve is excluded or leased for the purpose of an exchange, it is first necessary that any right-holders or other natives resident on the land should be compensated. This should be done by the method described in section 1541 (subsections 5-9) below for the setting apart of land and the payment of compensation.

Inter-
penetration
between
Tribes.

1477. Allusion has already been made in several places to peaceful penetration between tribes, especially as a result of inter-marriage. We regard this as the most useful method of distributing the population. It also generally tends to raise the average level of attainment, since it leads to a pooling of ideas, and tribes gain experience of each other's mode of life. It may occasionally happen that penetration takes place so rapidly and in such numbers as to constitute a real or imagined menace to the security of the occupant tribe, and it is therefore evident that power must be reserved to the Provincial Commissioner to put a stop to unauthorized movements at such periods. While recourse to such measures might frequently be necessary in the more remote and uncivilized parts of the Colony, the need for such action among the more advanced tribes should be of rare occurrence.

1478. We affirm as a principle that the maximum of fluidity compatible with security should be allowed.

1479. The weight of the evidence before the Commission is that, when native tribes are allowed free intercourse, they find a *modus vivendi*, but that anything in the nature of a buffer area is ineffective in preventing conflicts between tribes, and tends to discourage peaceful penetration. The same thing applies to too rigid an enforcement of boundaries between tribes.

1480. While the infiltration of families or individuals of one tribe into the territory of another may frequently cause administrative embarrassment of a minor kind, such, for instance, as a difficulty in keeping hut-tax registers, the advantages of securing a more fluid distribution are such as decidedly to outweigh any such consideration, and we recommend that, unless the occupant tribe

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objects, peaceful interpenetration should not be prevented. The force of these remarks will be clear when it is realized that, while the reserves as a whole are sparsely populated, the general average density in the three Kikuyu and three Kavirondo districts, which contain between them more than half of the total native population of the Colony, is 170 to the square mile.

1481. We go so far as to assert that interpenetration is the most hopeful of all the methods for securing a more even distribution. It is not so likely to cause resentment as inter-tribal leases, since immigrants who penetrate in small groups will become absorbed. But the process is slow, the problem is urgent, and other and more direct methods with more immediate results are also required.

1482. We shall next examine the possibility of extending tribal territory by additions of adjacent land.

1483. If one tribe has insufficient land and another has more than it requires, it appears to have been contemplated in the Lands Trust Ordinance that the one tribe should lease land to the other. When describing the leasehold clauses of the Bill in the Legislative Council on the 12th May, 1928, the Governor stated, in the course of his speech :—

(i) Inter-tribal
Leases.

“ I have dealt so far with the possibility that the reserves now gazetted may not prove large enough for a greatly increased population. It is equally necessary to deal with the possibility that some of them may prove too large and rich for effective use as a whole by any possible increase of their tribal population. . . . I am convinced that this contingency must be met as squarely as the other; and it may be met in more than one way by the leasehold clauses in the Bill. In the first place, the tribe owning spare land may lease it to members of another tribe for development.”

1484. Although it is clear from the above passage that leases between tribes were contemplated, the machinery provided for them in the Ordinance was ill-adapted to such a purpose. Section 10 provides that the rent shall be fixed at the “ highest amount that can reasonably be expected to be obtained for the land, having regard to all the circumstances of the case,” while section 7 provides that land may not be leased “ unless there is reason to believe that the natives of the tribe for which such land has been reserved will derive benefit, apart from any revenue which may accrue therefrom, from the grant of such lease.” And by the same section it is provided that the lease may not take place if the land is being beneficially occupied by the said natives, or if it is likely to be required for their use and support during the currency of the lease.

The present
Leasehold
Clauses are
unsuitable to
Inter-tribal
Leases.

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1485. It does not seem to be equitable that if a tribe wishes to let a piece of land to another tribe at something less than the highest rent which can reasonably be expected to be obtained for the land, it should be precluded from doing so. Secondly, a tribe would seldom admit that it was likely to enjoy any benefits, apart from revenue, by leasing any part of its territory to another tribe. Thirdly, it would be quite impossible to say that the land was not "likely to be required for the use and support of the tribe during the currency of the lease", since no date could be assigned to its final determination. The Report of the Commission on Closer Union observes: "It could hardly be made on any but a permanent basis, for it would be a matter of grave difficulty to displace a population which had come to rely on the occupation of the area for the normal conduct of its life."

The Need
for Special
Clauses.

1486. For these reasons, it is clear that special clauses will have to be made to govern the question of leases between tribes, and we are in agreement with the opinion expressed by the Hilton-Young Commission (p. 347) to the effect that Government must retain direct responsibility in such matters and could not fittingly resign them to the Lands Trust Board. We consider that the Board should be consulted, but should not have the final voice; if the Governor and the Board are not agreed, the final decision should rest with the Secretary of State.

The Termination
of
Inter-tribal
Leases.

1487. In regard to the termination of an inter-tribal lease, we agree with the Hilton-Young Commission that it would be difficult, but we believe that much can be done by a progressive advancement towards individual tenure. Probably the best kind of lease would be one which is revisable at somewhat frequent intervals, each revision showing a progressive devolution from the tribe towards the individual. In the first stage, the lease is (for practical purposes) from one tribe to another, but gradually it might be changed into a lease between certain groups of the one tribe and certain groups of the other, and ultimately descend to families and possibly individuals. At the last stage, it ceases to be a matter of tribal concern, and would simply be a case of certain individuals of one tribe holding leases from certain individuals of the other tribe on conditions conformable to the uses and custom of land tenure obtaining in that tribe. Processes of transfer would come into operation, and an economic distribution of population would take place, regardless of tribal origin.

1488. These developments are, of course, far in the future, but we do not think that it is too soon to contemplate them as a process. In making these observations, we have in mind primarily the more advanced tribes.

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1489. We now turn to the case of a lease required by a tribe in an area where no special racial privilege exists—i.e. in "D" areas.

(ii) Leases to a Tribe in Areas where no Special Privileges exist.

1490. We recommend that leases to a tribe, *qua* tribe, should generally be confined to cases in which the area to be leased is adjacent to the territory of the tribe. In other cases, the leases would be leases to groups, families or individuals in either "C" or "D" areas.

1491. Secondly, we recommend that if the adjacent land to be added to the reserve is already held upon title, Government take steps to re-acquire the land before letting it to the tribe, since it is preferable that the tribe should hold the land as from Government and not from any individual.

1492. We recommend strict conditions of conservation and use, which would naturally be taken into consideration in fixing the rent. The point of greatest importance is that the area should be developed to the best advantage as an asset of the Colony.

1493. It is obvious that Government and not the Board should conduct the operation, fixing both the rental and the conditions.

1494. If the land in respect of which the application is made is situated in the European Highlands, the same general conditions would apply, but it is clear that the European community would have to be consulted, and some practical means would have to be devised, whether through the District Councils or otherwise. In this case therefore, we recommend that agreement should be sought between the Government, as representing the Colony as a whole, and accredited representatives of the European community.

(iii) Lease to a Tribe of Land which is in the European Highlands.

1495. If agreement cannot be reached, the question which presents itself is whether, if at all, the lease can be forced through in spite of the opposition of the European community.

1496. In another part of the Report we shall make a recommendation that the external boundaries of the area in which a European privilege obtains should be proclaimed under Order in Council. This would, in this respect, place it in a position in which it is comparable with a native reserve, and it may well be argued that the conditions under which natives should be able to obtain a lease of land in the European Highlands should correspond with the conditions under which Europeans are able to obtain a lease in native reserves. According to the recommendations which we are making to regulate leases in native reserves, it will be possible, if sufficient need arises, for leases to be granted to Europeans even if the natives concerned and the Local Native Council object, but it will not be possible if the Land Board objects. The analogy

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demands that, if the need were sufficiently urgent, a lease to natives of land in the White Highlands might be forced through against the wishes of the owner of the land (possibly by the application of the Land Acquisition Act), or against the wishes of the District Council, but not in face of any objection by accredited representatives of the whole of the European Highlands. We consider that this argument is fair to both parties, and recommend that the above procedure be adopted.

**Summary of
Facilities.**

1497. In the foregoing paragraphs we have described the facilities which we recommend on tribal lines, by extensions of native reserves, and have explored the possibilities of leases to tribes either inter-tribally or otherwise; and the potentialities of interpenetration. We have also recommended facilities on non-tribal lines by our proposals under Classes C and D. In order that the necessity for the two latter classes may be clearer, we shall now add a note on the problem provided by the existence in the European Highlands of a large number of native labour-tenants or squatters. For, in our judgment, it is for this class of native that the chief utility of "C" and "D" areas will be found, so that the question of accommodating them after discharge from the farms may be more easily settled.

**A Note on
Labour-
tenants.**

1498. There exists outside the reserves a squatter population which cannot be far short of 150,000 persons, or 30,000 families of five. While the reserves as a whole are able to accommodate their own natural increase, these squatters (of whom over two-thirds are Kikuyu) cannot in all cases be accommodated in the reserves without very grave embarrassment, both as regards the individuals and their stock; the difficulty as regards the individuals being mainly caused by the system of land tenure, particularly in Kikuyu. In respect of the squatters who are not Kikuyu, the embarrassment arises not so much in regard to the squatters themselves as their herds of live stock. It would be rash to rely on the settled area being able, as a permanent condition, to absorb more squatters than are now residing there, and the numbers of their stock will certainly have to be reduced.

1499. There is therefore a problem how the natural increase of the squatters is to be accommodated. The magnitude of the difficulty will be realized when we say that it would be possible for 600 squatter families of five to leave the settled area yearly, and for the loss to be made good by a natural increase of 2 per cent, which is not an unreasonably high estimate in the circumstances.

1500. At present, most squatters, when they leave the settled area, would probably prefer to return to their reserves rather than take up land on some form of private tenure in an alternative area, even if it were made available for them. But the more they

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do this, the greater the strain on the reserves, and especially on the three Kikuyu Reserves, which are already densely populated. As the years pass and the reserves fill up, it will be increasingly difficult for natives, who have been long absent, to return and cultivate or find room for their stock in their reserves. The increased individualism and independence of mind which they will have acquired in the settled areas will incline them to seek places where they can hold land on private title, if such can be found.

1501. We feel that in equity an obligation exists to provide alternative land (not in the Highlands, where a special privilege for Europeans obtains) in which such natives could take up land on some form of private right on reasonable terms. Such areas we propose to provide by our recommendations regarding Native Leasehold Areas, Class C.

1502. A point of paramount importance must now be made. In this chapter we have described the lines on which we propose that the native land problem should be solved, in so far as the provision of land is concerned. But no provision of land could, by itself, possibly solve the problem. The crucial point is how the land is to be used.

Development
of Native
Lands.

1503. This chapter is intended only as a preliminary survey, which the subsequent chapters will amplify. We shall therefore be content in this place to mention the point. But recommendations designed to protect the land from misuse we regard as forming as essential a part of our duties as recommendations for the provision of land. Both of them are equally "needs of natives in respect of land".

1504. There are two principles by which in our opinion any land system must be judged, namely, security and fluidity, and it is essential that there should be a proper balance between the two. We feel that the present system in Kenya, as embodied in the Native Lands Trust Ordinance, lays too great an emphasis on security in so far as the native reserves are concerned. The security afforded amounts, in effect, to a permanent entail to definite tribes and even to units of tribes. In the circumstances which called the Ordinance into being, it was right that security should be accorded the prior emphasis, and in making our recommendations for the settlement of claims of right we also have given it first place in our regard. But we recommend that the severity of the entail to particular tribes should be mitigated by a liberal interpretation which would admit of a peaceful penetration by groups or families of other tribes to the utmost extent which native custom and the security of the occupant tribe permits. When we come to the requirements which are based on economic needs, we have endeavoured to lay the stress on fluidity. When facing an uncertain

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Chapter.

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future, we consider it most important that the task of Government in future years should not be compromised by a premature locking up of the country's assets in land. They must be kept as fluid as is consistent with the security of the developing occupiers. While every precaution must be taken to safeguard their rights, we do not consider it necessary or desirable that extensions made to native reserves on economic grounds should be accompanied by any guarantee of absolute permanency.

1505. We can conceive a tribe so decreasing in numbers that the land would no longer be economically necessary for them, and, in that case, facilities should be available to permit of its development by other people.

1506. Furthermore, tribalism cannot be considered as necessarily permanent in itself, but is merely a stage in social evolution. When tribalism vanishes, land reserved for ever for a particular tribe is meaningless. While therefore we have taken care to recommend the reservation of adequate land for the present and immediate future needs of each tribe, and have provided for the contingency that a tribe may need to extend its boundaries still further by means of the Governor's power to add to reserves or by means of a tribal lease, we have devoted equal attention to the provision of means whereby individuals may, so to speak, hive off from the tribe, and go and take up land in "C" or "D" areas on lease. It is clear that the whole problem turns on the use to which the land is put, both in these areas and also in the reserves. If the reserves are developed under improved methods of agriculture and stock-farming they will carry a larger population and the requirements in the way of "C" areas will proportionately be less. Similarly, if the parts of the "C" areas in use are well developed, the raising of revenue for further development will be easier.

1507. But we believe that it will not be possible for the natives to develop the "C" areas entirely unaided. Problems of water supply and conservation have to be considered, and it will probably be found beneficial to allow large companies either to take up leases on terms or to enter into contracts which will ensure the development of the resources in the best interests of the natives.

1508. The development of parts of these areas will, we fear, require very considerable capital expenditure. But it is probable that before these parts are required the native population will have increased considerably beyond its present proportions, and that increase in population and prosperity will, we hope, simplify the raising of the necessary capital.

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1509. It may appear to some that the native leasehold areas are unnecessarily large, but on the evidence before us we consider them to be justified. There are likely to be considerable numbers of natives living outside the reserves, either in towns or as labour-tenants on farms, who may find it difficult to re-accommodate themselves in the reserves, and for whom alternative provision has to be made. This is a problem which is likely to increase in magnitude with the passage of time, and has occupied a foremost place in our minds in determining the extent of the areas which we consider necessary to set apart under Class C.

1510. Our fourth type of land. Class D, is land in which initial grants and transfers shall be made absolutely irrespective of race. This method provides a free market in land and the maximum of fluidity, and it is a method to which the natives may be expected increasingly to resort as they advance in civilization and experience.

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TABLE I.
SHOWING THE UNITS OF "NATIVE LANDS" AS WE RECOMMENDED THAT THEY SHOULD BE CONSTITUTED

Serial No. of Native Land Unit	Name of Native Land Unit	Comprising	Present extent of Native Reserves Con- cerned	Land Recommend- ed to be added as Class A		Land Recommend- ed to be ex- cluded		Resultant area of Native Lands	Percentage of Increase (to nearest unit).
				Area	Ref.	Area	Ref.		
1 ..	KIKUYU ..	To comprise the South Nyeri, Fort Hall, Kiambu, Embu and Mera Native Reserves plus Class A additions as recommended (minus an area recommended to be ceded (71 acres).	Sq. M. 5,287	Sq. M. 865	Sec. 463 and 562	Sq. M. ..	Sec. ..	Sq. M. 6,152	16%
2 ..	MASAI ..	To comprise the Masai Native Reserve as gazetted plus areas recommended to be added as Class A, minus areas recommended to be ceded .. .	14,797	178	684 695 696 697	31	694 696 697	14,944	1%
3 ..	KAMBA ..	To comprise the Native Reserves of the Machakos and Kitui Districts plus areas recommended to be added as Class A minus areas recommended to be ceded.	8,077	576	774 775 779 783 795	389	787	8,264	2%
4 ..	KERIO ..	To comprise the Suk, Kamasia, Njemps, Elgeyo and Marakwet Native Reserves, plus areas recommended to be added as Class A minus areas recommended to be ceded.	7,733*	11	970 971 1,007	8	1,007	7,736	..

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5	..	NANDI ..	To comprise the Nandi Native Reserve	757	..	..	..	..	757	..
6	..	KAVIRONDO	To comprise the North, Central and South Kavirondo Native Reserves plus Class A additions as recommended.	7,114	66	1,118 1,087 (3) 1,127	..	..	7,180	1%
7	..	LUMBWA..	To comprise the Belgut, Buret and Sotik Native Reserves, plus areas recommended to be added as Class A.	830	148	1,168 1,176	..	..	973	16%
8	..	NORTH POKOMO	To comprise the North Pokomo Native Reserve.	119	..	..	..	..	119	..
9	..	COAST ..	To comprise the Taveta, Dabida, Sagalla, Central Pokomo, Southern Pokomo, North Nyika and South Nyika Native Reserves and all the Native Reserves in the Digo District, plus Class A additions as recommended.	4,752	58	1,255 1,262 1,268 1,275 1,295	..	..	4,810	1%
				49,466	1,902		428		50,940	3%

* *Note*.—The area of 7,733 square miles includes 1,315 square miles north of the Swam River, which are in use as Native Reserve, though not so gazetted. Their inclusion is subject to the considerations mentioned at sections 911 and 912 of the Report.

The remainder, if these 1,315 square miles are deducted, is 48,151 square miles. Actually the area of the Native Reserves as at present gazetted is given by the Survey Department as 48,149 square miles. The discrepancy is insignificant and we have not troubled to trace the error in our figures.

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TABLE II.

SHOWING THE UNITS OF "NATIVE LANDS" TOGETHER WITH THE AREAS
 RECOMMENDED TO BE "NATIVE RESERVES" AND "PROVISIONAL
 NATIVE RESERVES."

Unit of " Native Lands " to which the Native Res- erves or Provi- sional Native Reserves are recommended to be attached	Areas recommended to be added as Native Reserves		Areas recommended to be added as Pro- visional Reserves		Total recommended to be added as Native Reserve or Provisional Native Reserve
	Class B. 1.		Class B. 2.		
	Sq. Miles	Section Reference	Sq. Miles	Section Reference	
(1) KIKUYU ..	333	542	..	..	383
(2) MASAI ..	..	..	..	..	..
(3) KAMBA ..	300	759	..	..	300
(4) KERIO ..	190½	942 967 969 1,009 1,020	140	939	330½
(5) NANDI ..	..	..	..	..	..
(6) KAVIRONDO	..	..	..	..	..
(7) LUMBWA ..	..	..	..	..	..
(8) NORTH POKOMO.	..	..	..	..	..
(9) COAST ..	22½	1,229 1,230	119	1,275	141½
	896	..	259	..	1,155

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TABLE III.

SHOWING THE TOTAL AREAS RECOMMENDED TO BE NATIVE LANDS; NATIVE RESERVES; OR PROVISIONAL NATIVE RESERVES.
Also, FOR COMPARISON, THE TOTAL AREAS OF THE RESERVES AS NOW EXISTING.

Unit of Native Land	Extent of Native Lands, Class A	Extent of Native Reserves Class B1	Extent of Provisional Native Reserves Class B2	Total of Class A, B1 and B2	Total area of the corresponding Reserves as now existing	Total Increase	Percentage of Increase
	Square Miles	Square Miles	Square Miles	Square Miles	Square Miles	Sq. Miles	
(1) KIKUYU..	6,152	333	..	6,535	5,237	1,243	23.6
(2) MASAI ..	14,944	..	..	14,944	14,797	147	1.0
(3) KAMBA ..	8,264	300	..	8,564	8,077	487	6.0
(4) KERIO ..	7,736	190 ½	140	8,066 ½	7,733	333 ½	4.3
(5) NANDI ..	757	..	..	757	757	..	..
(6) KAVIRONDO	7,180	..	..	7,180	7,114	66	0.9
(7) LUMBWA	973	..	..	973	830	143	17.8
(8) NORTH POKOMO	119	..	..	119	119	..	..
(9) COAST ..	4,810	22 ½	119	4,951 ½	4,752	199 ½	4.1
	50,940	896	259	52,095	49,466	2,629	5.3

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SCHEDULE OF ADDITIONS TO NATIVE RESERVES
RECOMMENDED.

Class A.

Additions to the Kikuyu Native Reserve.—Mwea, L.O. 4450, L.O. 388/1, Section 463 (1); various areas to comprise 21,000 acres, Section 463 (2); an extension in the Meru area by a reversion to the 1925 boundaries as provisionally gazetted (Section 560).

Additions to the Masai Native Reserve.—The Quarter Mile Zone (Section 684); an area of grazing land at the southern extremity of the Eastern Mau Forest Reserve (Section 695); an area of land in the Kedong Valley (Section 696); a portion of Mr. Colville's farm (Section 697).

Additions to the Kamba Native Reserve.—Part of L.O. 1740 (Section 774); Mwani Hill (Section 775); the Emali extension (Section 779); certain land north of the Railway in the general neighbourhood of Makindu (Section 783); an extension in the neighbourhood of the Manzi Etumo River (Section 793).

Additions to the Kerio Native Reserve.—L.O. 1168 (Section 970); an area of land to the east of Lembus Forest (Section 971); part of L.O. 1869 and part of the Grogan Concession (Section 1007).

Additions to the Kavirondo Native Reserve.—Part of the present area of Kisumu Township (Section 1118); an area on Mount Elgon (Section 1087); Maseno (Section 1127).

Additions to the Lumbwa Native Reserve.—Chepalungu, with the exception of 10,000 acres (Section 1176).

Additions to the Coast Native Reserve.—Wundanyi Estate (Section 1255); two areas on the land of Teita Concessions, Ltd. (Sections 1262 and 1268); the area marked Z1 on the map at Section 1271; a piece of commonage adjoining the Pungu-Mzichenda Native Reserve (Section 1295).

Class B1.

Additions to the Kikuyu Native Reserve.—An area in the northern part of the Yatta (Section 542).

Additions to the Kamba Native Reserve.—The Yatta Plateau (Section 759).

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Additions to the Kerio Native Reserve.—An area contiguous to the Njemps country (Section 941); a further area contiguous to the above (Section 969); the land to be evacuated by the Uasin Gishu Masai, with the exception of Eldalat Hill (Section 967); part of L.O. 1869 (Section 1009); an extension in the Cherangani area (Section 1020).

Additions to the Coast Native Reserve.—Two areas marked "D" on the map at section 1235, and a corridor between them.

Class B2.

Temporary addition to the Kerio Native Reserve.—An extension in the Churo area (Section 939).

Temporary extension to the Coast Native Reserve.—An area marked Z/2 on the map at Section 1271.

Temporary Lease.—There is a recommendation in this regard at Section 968.

SCHEDULE OF EXCLUSIONS FROM NATIVE RESERVES

RECOMMENDED.

Exclusions from the Masai Native Reserve.—Certain forest land in connexion with the Mau Forest exchange (Section 694); the Kinangop circumcision area (Section 696); certain land contiguous to Mr. Colvile's farm (Section 697).

Exclusion from the Kamba Reserve.—The Chyulu sub-location of the Kikumbuli Native Reserve (Section 787).

Exclusions from the Kerio Native Reserve.—Three areas now forming part of the Elgeyo Native Reserve, as shown on the map at Section 1029.

CHAPTER III.

PROBLEMS WHICH ARISE IN CONNEXION WITH THE ACQUISITION OF PLOTS FOR PUBLIC PURPOSES; SOCIAL SERVICE; TRADE, OR INDUSTRY, IN NATIVE RESERVES.

Method of
Acquiring
Plots for
Public
Purposes;
for Social
Service;
Trade or
Industry.

1511. Considerable difficulty has been experienced, especially in the Kikuyu Province, in finding a satisfactory method of compensating right-holders, when plots are required for purposes of social service, trade, or industry. The method provided in the Lands Trust Ordinance for the acquisition of such plots is lease, or, if the plot is required for a public purpose within the meaning of section 15 (1) of the Ordinance, there may be exclusion and exchange for another area to be added elsewhere. There is also a practice of "setting apart", the authority for which is derived from rules made in 1931, which will be quoted below. It is necessary to consider the operation of these methods.

The Method
of Exclusion.

1512. Under the method of exclusion, it is provided that, when land is excluded for a public purpose, an area equal in extent and as nearly as possible equal in value should be added. The intention is fair enough, but it has been represented to us that tribes are often very jealous of their territory. As one witness put it, they do not so much consider the land as belonging to them, as that they belong to the land.

1513. We incline to the belief that a permanent exchange, such as would be represented by an exclusion of land for a public purpose and a corresponding addition elsewhere, is not a method which is likely to appeal to a native tribe, and we are convinced that there are some tribes to whom it would not appeal.

1514. When we turn from the point of view of the tribe to that of the individual, the position is even less satisfactory. He gets compensation for disturbance and the use of the added block, which in all probability will be useless to him, since it is unlikely that he will leave his own relatives and go and live in a place which in most cases would be far distant from his home, even if the added block were contiguous to the reserve. It is true that in Kikuyu he might sell or pawn it, but that is certainly not a form of compensation which would be acceptable to him. Moreover, he would object most strongly to the loss of his own land, and would far prefer to keep a reversionary interest in it, however shadowy, rather than receive alternative land elsewhere.

1515. Another serious objection to the method of exclusion is that many of the public purposes are for the direct benefit of the

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natives themselves, and are often undertaken at the expense of the Local Native Councils. It would be absurd that, when a hospital or school has been erected largely at the expense of the Local Native Council, the plot should be excluded. There seems to us to be something incongruous in excluding a piece of land from the reserve merely for the purpose of making a road, or a bridge, or a camp, or even a township, since all these services are part and parcel of the progress of the reserve. It is most desirable to encourage in the natives a civic pride in their roads and bridges, their social service centres and their townships, rather than to exclude them and create the impression of taking away everything which acquires an exceptional value. We are somewhat doubtful whether the method of exclusion is really suitable in any circumstances, and shall make alternative proposals in the sections below in which we deal with "setting apart".

1516. Even when such undertakings are not exclusively for the benefit of natives, e.g. in the case of a road or a township, there are strong arguments for keeping the land in the reserve.

1517. In spite of the fact that we consider setting apart to be more suitable than exclusion as a means of securing land for public purposes, we are agreed that exclusion should remain a possibility. It therefore becomes relevant to consider on what terms it should be allowed.

1518. Section 15 of the Ordinance provides that exclusions can only be made with the advice and consent of the Lands Trust Board, and that before such consent is given, it is necessary: (a) that the proposed exclusion should be brought to the notice of the Local Native Council and of the natives concerned; (b) that the Local Land Board must discuss the matter; (c) that representatives of the location or section concerned and of the local natives concerned must be co-opted on the Board for the purpose of the discussion; and (d) that, if the area is over 200 acres in extent, and the Local Native Council or the African member or members of the Local Board object, the exclusion cannot take place without the consent of the Secretary of State. If consent is obtained, the exclusion takes place by the process of exchange already described above.

The Nature of
the Authority
required
before
Exclusions
may take
place.

1519. Since we shall make a recommendation in another place that the Local Board should consist entirely of members of the Local Native Council with the District Commissioner as chairman, we regard (a), (b) and (c) as suitable, but consider that in view of the composition of the Lands Trust Board which we recommend elsewhere, (d) should no longer be required.

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The Land
Acquisition
Act.

1520. We find it regrettable that no recourse has been provided against a veto by the Lands Trust Board against the exclusion of land required for public purposes, since it is one of the fundamental necessities of Government that it should always have the power to secure land for public purposes by means of Land Acquisition Acts or similar instruments. In our opinion, some such recourse ought to have been provided, although we agree that the necessity for resorting to it should be very rare.

1521. We consider that, if land is required for public purposes and if no satisfactory solution can be found either by the method of setting apart (with or without lease) or by the method of exclusion and compensatory addition as provided in section 15 of the Ordinance, then it should be possible for the Governor to make use of the provisions of the Land Acquisition Act, subject to the approval of the Secretary of State and subject to the Lands Trust Board being consulted upon the terms. We are convinced that natives would prefer that the land should be their land even with the condition that the Land Acquisition Act applied (which applies to all other land in the Colony), rather than that it should remain Crown land as it is now.

Leases of
Land for
Public
Purposes.

1522. An alternative way of acquiring land for public purposes is lease. But apart from other difficulties, to which we shall refer later, there appears to be something incongruous in Government having to take a lease of land in a native reserve, e.g. in order to build a dispensary entirely for the use and benefit of the natives. And the incongruity is still more marked if the lease is issued to the Local Native Council, which in that case would first have to compensate the right-holders and then pay rent to itself.

Setting
Apart.

1523. We may conjecture that it was largely in order to circumvent these difficulties that the rules under the Lands Trust Ordinance, published under Government Notice 531 of the 31st August, 1931, were introduced. Rules No. 9 and 10 are as follows:

Rule No. 9.—"If in the opinion of the Provincial Commissioner it is desirable that a specific area in a native reserve should be set apart for the purpose of a trading centre or for a school, hospital, or other institution for the benefit of the natives residing in the reserve, or for a Government camp or station, or for a police or military post, or for afforestation, water supply, or for any other purpose which in his opinion is likely to benefit the natives resident in the reserve, he shall cause a proposal to that effect to be laid before the Local Native Council and before the natives concerned, whose recommendations shall be communicated to the Local Board at its

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next meeting. The report of the Local Board shall be forwarded without delay to the Central Board for their consideration."

Rule No. 10.—"When any area has been duly approved and set apart by the Central Board for the purpose of a trading centre it shall be marked out into plots in such manner as the District Commissioner (subject to the directions of the Provincial Commissioner) may direct, and in such case it shall not be necessary to obtain the further sanction of the natives concerned to the grant of any individual lease or licence in respect of a plot situate in such area."

1524. These rules have been commonly interpreted to mean that the area as a whole may be set aside without lease, though leases of individual trading plots in it would be necessary. The provision has already been put into practice in several cases, and in Kikuyu it has been found that strong opposition is evinced by right-holders to the acceptance of an outright compensation, but that there is less objection to payment in the shape of an initial "sweetener" and thereafter an annual compensation, practically indistinguishable from a rent. Evidence given to us by some of the more intelligent natives at Kisumu and in *baraza* at Mumias indicated that the Kavirondo natives hold the same view. The chief merits which we see in the method of setting apart are: (1) That it avoids the anomaly of the Native Council having to pay rent to itself; (2) That it secures a whole block for development and compensates the right-holders, generally by annual payments, for the whole of it, so that the area can be subdivided directly by Government or the Local Native Council without complicating embarrassments about compensation having to be considered in the case of each separate plot; (3) That it preserves the tribal territory as an integral whole in contradistinction to the method of exclusion.

1525. In regard to the authority to be required before land is "set apart", we make the following recommendation which is in conformity with the existing rules.

The Nature of
the Authority
required
before Land
can be Set
Apart

1526. The Provincial Commissioner should have the power to set apart land for public purposes or as a step preliminary to the issue of any lease, which in his opinion is for the benefit of natives resident in the tribal unit concerned, either in respect of the use to which the land is to be put or because of the revenue to be expected from rents. Provided that no such land should be set apart until:—

Proviso 1.

- (a) The local natives have been consulted.
- (b) The Local Native Council has been consulted.

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- (c) The Local Land Board has been consulted, representatives of the location concerned being co-opted for the purpose.
- (d) Due compensation has been arranged in the manner which will be recommended in section 1541 below.

Proviso 2.

- (a) If the Local Land Board does not support the proposal to set apart, the land should not be set apart unless the sanction of the Governor is given.
- (b) If the Local Land Board supports the proposal, but the Provincial Commissioner does not support it, the land should not be set apart unless the sanction of the Governor is given.
- (c) If the land set apart is over ten acres, the Lands Trust Board should have the power of veto, if it considers that the special purpose for which the land is set apart is not such as will primarily be of benefit to the natives.

Industrial and
Agricultural
Leases.

1527. While the rules regarding setting apart may be applied to secure the land wanted for a trading centre in which the plots can then be leased severally, it is more doubtful whether it applies to isolated plots, such as mill plots in the reserve or to ordinary industrial or agricultural leases. But since no lease may be issued in a native reserve unless the Land Board considers that the issue of it will benefit the natives, and since Rule 9 covers any purpose which in the opinion of the Provincial Commissioner is "likely to benefit the natives", it seems probable that it could be held to cover all cases.

1528. However this may be, it would, in our opinion, be generally convenient if all leases issued in native reserves should be preceded by the land being set apart, so that the Local Native Council would first make itself responsible for compensating the right-holders, before the lease is issued. The lessee would then get a straight lease of the land, specifying the rent payable to the Local Native Council, without any complicating clauses about compensating right-holders.

1529. Although leases of large areas to private enterprise are possible under the Ordinance, we understand that only one such lease has actually been carried out, and that was to give effect to an arrangement already in train before the Ordinance was passed. There is every reason to endorse the opinion expressed by three of

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the members of the Hilton-Young Commission, that such leases will be extremely rare. It observed in regard to them :—

“ Our conclusion is that, until the natives are sufficiently educated and organized to express a responsible and intelligent opinion, until their requirements in land and the potentialities of the reserves to meet them can be assessed with much more certainty than at present, the leasing of substantial areas of land in the reserves to non-natives for cultivation ought not to be permitted except in very exceptional circumstances.”

1530. Apart from the special case of mining lease, almost all leases of small areas in native reserves are likely to be for mission schools or trading plots or the like.

1531. After land has been set apart, it could, where so required, be subdivided into plots to be leased in conformity with the purposes for which the land was set apart. The Provincial Commissioner should decide after consultation with the Local Board, provided that the Lands Trust Board or (where it has delegated its authority to him) the Chief Native Commissioner should have the power of veto in respect of the lease of any plot exceeding ten acres in extent.

The Nature of
the Authority
required
before Land
can be
Leased.

1532. Since we have already recommended in section 1526 above that the Lands Trust Board should have a power of veto in respect of the setting apart of any land in excess of ten acres, this extra safeguard may be thought unnecessary. But sometimes the Lands Trust Board might approve of a much larger area being set apart, for instance for the institution of some scheme of industrial co-operation in which non-native capital might play a part. It is right that it should retain a measure of control, not only in respect of the original setting apart, but also in respect of subsequent leases, in order to ensure that leases are not being granted in such a manner as would involve a departure from the purposes for which the land had been set apart.

1533. There still remain certain difficulties to be considered. Section 10 of the Ordinance provides that, whenever land is leased, the Board “shall fix the rent at the highest amount that can reasonably be expected to be obtained for the land, having regard to all the circumstances of the case”. We consider this provision too rigid. There are cases in which a low rent with strict betterment conditions would be preferable. We consider that the Provincial Commissioner should assess the rent after consultation with the Local Land Board.

Certain
difficulties
about Leases.

1534. Under section 7 (b) of the original Ordinance, it is provided that no land may be leased, unless benefits will accrue to the reserve apart from the revenue to be derived. We fail to see any

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reason or commonsense in this clause. It might have the result, for instance, that a piece of land of no use to the natives could not be leased for an electric power scheme even at an enormous rental, but that a much larger area could be leased for a golf links on the score that caddies' fees will be paid to the natives.

1535. Under section 7 (c) of the original Ordinance, no land can be leased if it is being beneficially occupied by the natives, or even if it is likely to be required for their use and support during the currency of the lease. In some of the reserves, notably Kikuyu, it would be practically impossible to find any land except barren rock which would be held to be free from these disabilities. But it would be absurd to hold that land could not be leased to a mission or even a body of natives for a church, merely because a few goats habitually run on it. We think that this clause should certainly be discarded.

Summary of
Methods for
Acquiring
Plots for
Public
Purposes.

1536. The discussion of these methods has been somewhat discursive, and a summary is necessary. Several methods have been discussed for securing plots for public purposes. One of them, namely direct lease, can be omitted, since we have made a recommendation that in all cases lease should be preceded by setting apart. The remaining methods are :—

- (a) Exclusion under section 15 of the Ordinance, entailing the addition of a compensatory block, "equal in extent, and as far as possible equal in value."
- (b) Setting apart (with or without lease), plots within the area set apart being either leased to private persons or bodies or else developed directly by Government or the Local Native Council for the purposes of some public institution, in which case no lease is necessary.
- (c) Land acquisition under the Land Acquisition Act, in which case exclusion takes place on payment of the full value of the land plus 15 per cent. and no compensatory block need be added.

1537. It is clear that the public purposes for which methods (a) or (c) could be invoked must be public purposes as strictly defined. But method (b) we have decided to be suitable for leases of all kinds, and not only for those which are required for public purposes; provided that they must be for purposes which are beneficial to natives.

General
Recommendation.

1538. Our general recommendation is as follows :

1539. We recommend that setting apart should be regarded as the regular method of securing plots for all purposes, including public purposes; for social services; and for trade or industry, etc. But in case the Board should have exercised its veto against this

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method in any particular instance, there should be no other recourse, unless the purpose is a public purpose strictly so called, and is declared by the Governor to be so. In that case, the method of exclusion should be the next recourse. But if the Board will not agree to either of these courses (setting apart or exclusion), and a deadlock would otherwise ensue, the Governor should have the power, as a last resort, to apply the Land Acquisition Act, provided that the approval of the Secretary of State should first be obtained.

1540. This recommendation applies only to Class A lands. Similar or identical clauses would be required to govern the acquisition of land for public purposes in "B" areas.

1541. We make the following additional recommendations, which apply to the setting apart of land for public purposes, for purposes of social service, for trade or industry, or any other purpose:—

Recommendations regarding Setting Apart.

(1) That "setting apart" be a condition precedent to the issue of all leases in native reserves.

(2) That, except in the case contemplated in clause (b) of the second proviso to section 1526 above, no leases be issued which, in the opinion of the Provincial Commissioner, are unlikely to benefit the natives; regard being had, not only to the purpose for which the land is to be leased, but also to the revenue to be derived.

(3) That discretion should be allowed in arranging the terms and conditions of lease, the Provincial Commissioner deciding them in all cases in which the land to be leased is under ten acres in extent; provided that he should first consult the Local Land Board. If the Local Land Board dissents, there should be an appeal to the Governor.

(4) That all setting apart of land above 10 acres, and all leasing of land above 10 acres be subject to the veto of the Lands Trust Board; provided that certain powers of the Board in this respect should be delegated to the Chief Native Commissioner (*see* section 1631 below).

(Note.—The other conditions regarding the persons or bodies to be consulted and the nature of the consent required before land can be set apart or leased have already been described in section 1526 above.)

(5) That in districts where a recognizable form of right-holding exists, the right-holders should have the option of taking—

(a) outright, or

(b) annual compensation and an initial premium.

But in the latter case, if difficulties of succession or other complications arise, the Provincial Commissioner should be able to direct

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at any time that annual compensation should cease, and an outright payment be substituted.

(6) That in districts where private right-holding is less developed than it is in Kikuyu or Kavirondo, the Provincial Commissioner should decide, after consulting the Local Land Board, whether compensation should be under (a) or under (b), or, indeed, whether it need be paid at all (e.g. in the case of a piece of unoccupied land in an area where no recognizable practice of private right-holding exists). The Local Land Board should be consulted on the assessment of compensation when land is set apart, and if the Provincial Commissioner does not agree, there should be an appeal to the Governor, whose decision should be final.

(7) That outright compensation should always be assessed on the same basis as if the land were being taken over under the Land Acquisition Act—the full value, plus 15 per cent. But if an initial premium has already been paid, as in the case of an annual compensation, and it is subsequently desired to convert to an outright compensation, the amount of the premium should be deducted, in so far as it does not represent compensation for buildings or crops.

(8) That, except as otherwise provided in sub-section (6) above, the Provincial Commissioner shall assess the compensation after consultation with (a) the local natives concerned, (b) the Local Native Council, and (c) the Local Land Board; provided that, if the Provincial Commissioner and the Local Land Board disagree, the matter should be referred to the Governor, whose decision should be final.

(9) That if, after compensation has been assessed, a dispute should arise as to who are the persons entitled thereto, the Provincial Commissioner should cause the amount of the compensation to be deposited in the office of the District Commissioner pending award, but that the setting apart of the plot should not on that account be delayed. The amount deposited should be the whole of the compensation, if it has been decided to compensate under method (a), or the amount of one year's annual compensation and the initial premium, if it has been decided to compensate under method (b).

The Local Native Council should have the power to make the award after hearing the representations of the parties, but there should be an appeal to the Provincial Commissioner, whose decision should be final.

(10) That in the case of annual compensation the right-holder should keep his reversionary interest; but not in the case of an outright payment. In the latter case, the reversion would be to

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the Local Native Council, which would be regarded as being collectively the "owner", and might dispose of it in any way conformable to native law and custom as existing at the time.

(11) That the principle for determining what authority is responsible for compensating the right-holders should be as follows:—

(a) In respect of land set apart and developed by Government without lease:

If the purpose is principally for the local natives (e.g. a school at which most of the pupils will be local natives), the compensation should be paid either by the Local Native Council, or from the Native Betterment Fund allocated to the district.

If the purpose is for natives generally, rather than for natives of the district (e.g. an advanced educational establishment for the natives as a whole), compensation should be payable from the Native Betterment Fund (unallocated).

If the purpose is for the public generally rather than for natives in particular (e.g. a water-power scheme), compensation should be payable from general revenue.

(b) In respect of land set apart to be developed by leases (e.g. a trading centre):

The Native Council should in all cases be expected to pay the compensation, since it will receive all rents. In the event of the Native Council refusing to do so, the money might be advanced from the Native Betterment Fund, but in that case there should be a provision for recovering the amount from rents.

1542. The general methods of acquiring land for public purposes or for purposes of social service, trade or industry, etc., have now been sufficiently discussed. It remains to consider them in their application to special requirements. The cases which must be mentioned as possessing exceptional features are: (a) School and Church Plots; (b) Townships; (c) Mining Leases; (d) Other aspects of mining; (e) Control of water; (f) Roads and Railways; (g) Native Forest Reserves; (h) Licences of various kinds.

Application of
these Methods
in Special
Cases.

1543. The question of school and church plots in the Kikuyu Province is discussed at length in Appendix No. 7. We believe that the study there given of the subject will be useful as a general guide, although it is probable that the arrangements which may be found applicable to other provinces will be less elaborate in proportion as their system of land tenure is less developed. We invite attention to the evidence given by the Director of Education

(a) School and
Church Plots.

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(Evidence, pp. 1103-1106), by the Church Missionary Council (Evidence, pp. 1100-1102), and by certain natives at Kisumu (Evidence, p. 2297).

(b) Townships
in Native
Reserves.

1544. In respect of the creation and development of social service centres, trading centres and townships, we recommend that the basic principle should be that they remain in the reserve and grow progressively out of plots set apart as need arises. As each area is set apart, compensation is paid to the right-holders, if the land is subject to right-holding. Otherwise there is no need to pay compensation, except for disturbance. Compensation to right-holders might either take the form of an outright payment or of an annual payment after the manner of a rent. In the latter case, there should be a power reserved to buy out for an outright payment when necessary, in the same manner as if the land were being acquired under the Land Acquisition Act, but, though this would buy out the right-holder, the land would still remain part of the reserve.

1545. In the stages before a township is declared, the centres are managed and controlled by the Provincial Commissioner working through his staff, the Local Land Board being consulted when a lease is issued or when compensation has to be fixed, and the Lands Trust Board being consulted when any lease exceeds ten acres in extent; saving that, where the land to be set apart does not exceed one hundred acres or the land to be leased does not exceed fifty acres, the function of the Lands Trust Board in this respect should be delegated to the Chief Native Commissioner. (See section 1631 below.)

1546. At a later stage, the Provincial Commissioner, after consulting the Local Native Council and the Local Land Board, causes a township (Class II) to be declared, and may then require the Local Native Council to make due provision, out of the rents which it receives, for the discharge of landlords' responsibilities (a matter requiring amendment of the Native Authority Ordinance). At this stage, there is a small township committee with powers to raise conservancy fees and the like.

1547. The next stage is that, at the instance of the Provincial Commissioner and with the approval of the Lands Trust Board, a township (Class I) may be declared, and the Commissioner of Lands would then assume control. The terms and conditions would be arranged by agreement between Government and the Lands Trust Board, any point of disagreement being referred to the Secretary of State.

1548. The contingency that the Board might refuse to agree on any terms acceptable to Government, and that the development of the township might thereby be impeded, is sufficiently met by

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the general recommendation made in section 1539 above. Townships are a public purpose within the meaning of section 15 of the Ordinance, and recourse could be had to exclusion. Or, if the Board should still withhold consent, the land could be acquired under the Land Acquisition Act, subject to the approval of the Secretary of State.

1549. But it may be assumed that normally agreement would be reached, and the land would then remain an integral part of the native territory, though set apart as a township. In such case transference of control to the Commissioner of Lands would not affect the primary destination of the rents. They would still be paid to the Local Native Council, but, as part of the terms, the Council would be required to make an annual contribution from them on a percentage basis to be arranged.

1550. We recommend that all existing townships in native reserves should be held to be townships, Class II, and we are satisfied that, except in two cases to be mentioned below, no injustice will result if it is held that within the existing boundaries of such townships no private right-holders remain to be compensated—either for the reason that all right-holders have already been sufficiently compensated or that at the time when the township came into being no system of private right-holding had yet been recognizably established in respect of the area covered by the township. But if any extension of these townships should ever be required, it should be on the same conditions of compensation as are applicable to townships generally.

The Question
of Compensation
to Right-
holders in
existing
Townships.

1551. The two cases which appear to be exceptional are those of Fort Hall and Kakamega. In each of these places it so happens that there are twenty-six huts occupied by persons who claim to have rights in the land on the ground that they were occupying it before its alienation, and there are also certain natives who have been allowed to come on to it afterwards.

Two Special
Cases.

1552. We consider that the settlement of any claims which these natives may have should be as recommended in cases of setting apart (section 1541 (11) above). The Native Council in each case, as the recipient of the rents, should be responsible for paying any compensation in respect of that part of the township which is set apart for purposes of leasing; it should also pay any compensation due on account of any part developed by Government for the benefit of the natives of the district. The liability of Government to pay from general revenue should be confined to that part of the township, if any, which is being developed by Government directly, not by lease, for purposes not connected with the benefit of the natives of the district.

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1553. Difficulties of allocation will no doubt arise, as for instance whether the sites occupied by a police parade ground, or a post office, or even a tennis court for the use of officers employed in administering the reserve, are to be counted as land developed for the benefit of natives or not. We consider that the Provincial Commissioner should make a recommendation, after consulting the Local Land Board, and that the Governor should decide.

1554. Our own opinion is that in the case of Fort Hall the whole township may be said to exist for the benefit of the natives, and that the Local Native Council might legitimately be required to pay all the compensation assessed for right-holders, without assistance from Government. But since the District Commissioner is of opinion that an unnecessarily large acreage has been set apart for the township, we suggest that it may be found practicable to reduce it in the manner which he recommends in his evidence (Evidence, pp. 580, 581), and for any natives who now occupy the township to move on to the land surrendered.

1555. If a monetary compensation is paid, we consider that a generous assessment on a disturbance basis would be equitable. The fact must be taken into account that at the date when the land was taken into use as a Government Station, private right-holding was so undeveloped a conception as to be hardly recognizable, and the compensation, if now assessed on the full value of the land, would exceed the extent of the true loss sustained.

1556. The case of Kakamega is similar, but, although the township has existed in the past almost entirely for the benefit of the natives, its character is already changing to a considerable degree. The proportion of the compensation to be paid by Government as compared with the Local Native Council should therefore be greater than in the case of Fort Hall, and perhaps half-and-half would be a fair arrangement in respect of that part of the township which is being developed as a Government Station. But in respect of that part which is to be surveyed into plots for leasing, the Native Council should pay the whole of the compensation, since it will receive the rents.

Compensation
in case of
future
Extensions of
Townships.

1557. While at the early stages in the development of a trading centre it is fair that compensation for any land required for extension should be assessed on the agricultural value, it is proper that, when it has grown into a township, compensation for any further extension should be assessed on a basis which would make allowance for the enhanced value which the land had acquired on account of the proximity of the township.

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1558. We have made special recommendations to meet particular cases which have already arisen at Kakamega, or which may arise before any amending legislation which may be consequent on our Report has been effected (*vide* Sections 1146-1148 above). We shall now discuss the question of mining leases, not with any particular reference, but on its general merits.

(c) Mining
Leases.

1559. We see no reason why setting apart followed by lease should not be as suitable a method for mining leases as it is for other leases, subject to a slight variation to suit the special conditions of the case.

1560. In ordinary leases, the Native Council would receive the rents, and so recoup itself for the compensation which it has to pay to right-holders, and would probably secure for itself a small margin of profit as a recompense for its services. But under the Mining Ordinance it is prescribed that the lease of mineral rights is Sh. 5 per acre annually, payable to the Crown.

1561. We consider it desirable that in respect of mining all classes of the community should be treated on an equality, as nearly as may be.

1562. In our opinion, the following arrangement would be fair to all parties: The first stage is that the Provincial Commissioner, after consultation with (a) the natives concerned, (b) the Local Native Council, and (c) the Local Land Board, sets apart the land proposed to be leased, the method being precisely the same as in other cases of setting apart (*vide* sections 1526 and 1541 above).

1563. The area having thus been set apart is available to be leased. We recommend concurrent leases, one issued in respect of the mining rights and carrying a rental of five shillings annually payable to Government, the other issued in respect of the land for a rent to be paid to the Local Native Council. The initial rent in respect of the land should be assessed so as to give a fair economic return on the agricultural value, and should be sufficient to reimburse the Local Native Council for its expenditure in compensating the right-holders, and also to leave a small margin of profit, both as a general recognition to the tribe and also as payment for services rendered. We also recommend that the lease of the land should automatically expire or be renewed on the expiry or renewal of the mining lease. In the event of renewal, we recommend that the rental for the land be raised by, say, twenty per cent, and that a clause to this effect be included in the original lease as a condition of renewal.

1564. It may be objected that it is not fair to prescribe that there should be two concurrent leases in respect of mining operations in native reserves, while one lease suffices in other areas.

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But a landlord on a private estate outside the native reserve has the right to make his own terms with the applicant for a mining lease, subject to a recourse to arbitration, and the terms which he secures are likely to be at least as favourable as those which he would have secured by a lease of the land based on its agricultural value.

1565. A second objection which might be raised is in regard to the enhancement of rent on renewal. It may be argued that the lessor is not entitled to any profit from circumstances arising out of the success of the mine. But while we agree that the amount of gold won from the mine should not be a circumstance directly affecting the rental value of surface rights, we consider that the value of land in that neighbourhood will certainly improve because of the better roads, communications, markets, and other amenities which successful mining operations are bound to produce, and these are circumstances which ought to be taken into account. We therefore consider our proposal to be justified.

1566. The contingency must be considered that the Native Council might attempt to frustrate the issue of the lease by refusing to make the compensatory payments. In such case, it should be competent for Government to compensate the right-holders and recover the amount by distraint upon the rents payable to the Local Native Council.

An alternative
Method.
Temporary
Exclusion.

1567. As an alternative, we propose a method of temporary exclusion, which could be put into operation in any areas, if the Local Native Council and the natives affected prefer it, and if it is found to be practicable in the particular circumstances. The operation of the method would be as follows :

1568. The area required for the mining lease would first be excluded from the reserve and an area equal in extent and as far as possible equal in agricultural value would be added. Any right-holders affected would have the option of taking compensation in cash both for disturbance and for the full agricultural value of the land, or of taking compensation for disturbance only and going to live on the piece of land added, or, as a third possibility, it might be found practicable, as in the case of Kakamega, that they should be given a piece of native reserve forest near their own homes or a piece of commonage not subject to right-holding, so that individuals would be compensated from land already in the reserve, while the tribe at large would be compensated by the added block.

1569. Compensation for disturbance would include full compensation for huts and other buildings, for any crops not reaped, and a sufficient sum to enable the natives affected to purchase food for themselves and their families until they should be able to reap crops from their new land.

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1570. To avoid the difficulty of finding a fresh piece of land to add every time a lease is issued, it would, as a matter of practice, be convenient to set aside a block from which the compensatory addition could be made as required.

1571. The position on termination of the mining lease would normally be that the land comprised in the lease would revert to the reserve while the block added in compensation would revert to the Crown, excepting only such portion of it as might be held to be a fair set-off against any part of the area leased which had been permanently impaired by the mining operations. That portion would be permanently added to the reserve.

(*Note.*—The present obstacle to this method is that there is no provision under the Ordinance for making temporary additions.)

1572. After the land has been set apart and arrangements for paying compensation have been completed, the mining lease could be issued.

1573. The advantages and disadvantages of the two methods may be summarized as follows:—

Comparison of
advantage of
the two
Methods.

- (a) *From the point of view of the tribe.*—Under the “exclusion method” the tribe loses temporarily, and possibly permanently, an internal area, and receives instead an area external to its former boundaries. The more often this has taken place, the more pock-marked the reserve becomes, and on each occasion it loses an area from which increased rentals may be expected as each renewal of the lease takes place, and in return for it gets a tract of agricultural land in an area which is not so likely to increase in value. Under the “setting aside plus lease” method, the tribal territory remains intact, and the tribe stands to gain largely in revenue.

Some of the tribes of Kenya attach immense significance to the integrity of their tribal boundaries, and occasions when they would voluntarily agree to any land being excluded would be extremely rare. As they become more educated in methods of land tenure, it will be possible to wear down the opposition against lease, but the opposition against exclusion is based on what is almost a fundamental article of their tribal faith, namely, that their land is their mother and that they are not at liberty to abandon it.

- (b) *From the point of view of the individual.*—Under the exclusion method, the individual gets compensation for disturbance; the use of an area which may often be remote from his own home; and cash compensation for the

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difference in value, if any, between the area lost and the area added. And when the lease falls in, there may be a second disturbance.

Under the "setting aside plus lease" method he gets: Compensation for disturbance; annual compensation equal to the fair agricultural rental; with the possibility either of ultimate reversion or of being bought out at the full agricultural value, plus 15 per cent; and he continues to live near his own home. Or, if he prefers it, he can take outright compensation, and use it to get himself other land in the reserve or a lease of land in a Class C native area, or in any other way.

1574. Two objections may be raised: First, that if a native gets cash compensation he will squander it; second, that he may not be able to get alternative land to cultivate.

The first of these objections may have a certain force against an outright payment, but not against an annual compensation. In any event, the alleged improvidence of natives in respect of money does not seem to be supported by much evidence. Except that they are prone to invest their savings in cattle, they appear in most cases to be given more to hoarding than to improvident spending. As to the second point, there is no evidence whatever that any native ever has serious difficulty in getting land to cultivate, although he often has difficulty in getting land which he may cultivate as a right-holder. This latter consideration is largely of a sentimental kind and payment of an annual compensation is a standing recognition of his right, and he keeps the reversionary interest.

(c) *From the point of view of general convenience.*—Lease is a well-known civilized practice, and it seems to us generally desirable that when innovations are introduced into a native system they should be such as will lead it gradually to conformity with more civilized practices. The method of balancing every exclusion with an equal addition has no counterpart in civilized countries; is extremely awkward in practice, and is not so just as it seems, since it ignores the essential factor of the convenience of the person dispossessed.

1575. In spite of the fact that the above summary shows every reason to prefer the system of setting apart to the system of exclusion, nevertheless we recommend that the latter method should remain a possibility, if ever the people prefer it. There may be cases in which ingenuity can suggest a satisfactory solution on those lines, and, in order to satisfy the provisions of the original

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Ordinance, we have sought for such a solution in the case of Kakamega in respect of such leases which may already have been issued before action has been taken upon our Report.

1576. The particular question of Kakamega has already received attention in Chapter XIII of Part II of our Report (sections 1146 *et seq.*).

Recommendations regarding Kakamega.

1577. We have shown our reasons for thinking the method of setting aside plus lease to be far preferable to the method of exclusion, and it is only out of respect for the existing Ordinance that we have recommended that the latter should remain as a method. But, saving what we have written about Kakamega, we recommend that the method of exclusion, as a means preliminary to the issue of mining leases, should never be applied unless there is the clearest possible indication that both the local natives affected and the Local Native Council prefer it to the method of setting apart.

Local Option.

1578. Suitable regulations for mining leases will contribute to the solution of the land problems created by mining in native reserves, but they only cover a very small part of the field. The disturbance caused by prospecting, and by alluvial mining, and by mining from claims is incomparably greater than the disturbance likely to be caused by the issue of any mining leases which are in contemplation. But while the question of a mining lease is a straightforward problem on which we can recommend with some confidence, we believe that we may easily do more harm than good if we attempt to make precise recommendations on the other aspects of mining which would largely have to be based on theory, since the actual practice of mining and even prospecting in Kenya is still in its embryonic stages. The evidence before us is that hitherto there has been extremely little disturbance. There seems to be only one authenticated case of a hut having been moved, and that was by mutual agreement, and there has been little disturbance of cultivated land. It is generally admitted, and indeed obvious, that the natives have gained greatly from the creation of a new market for their produce and their labour so near their homes.

(d) Other Matters relating to Mining.

1579. On the other hand, it cannot be denied that the presence of some hundreds of Europeans living in a native reserve on no settled form of tenure is bound to cause embarrassment, and that it is desirable that it should be regulated. What is more questionable is how much regulation ought to be attempted yet. It may very possibly be wise to wait until the situation has developed and more experience has been gained before attempting any very definite regulation.

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1580. Nevertheless, there are aspects of the position which are serious and may become urgent, and we consider it our duty at least to offer a tabulation of the main difficulties in sight, and to comment upon them.

Prospecting
Rights.

1581. Under section 13 (i) of the Mining Ordinance, it is provided that land within a native reserve is excluded from prospecting or occupation under any prospecting right except with the consent of the Native Lands Trust Board in writing. Under section 5 of the Mining (Amendment) Ordinance, it is provided that the Governor, on the written request of the Lands Trust Board, may appoint Provincial Commissioners as delegates of the Board in this respect. We can well imagine that the provision that the consent of the Land Board should be obtained in each individual case before a prospector could prospect in a native reserve proved thoroughly unworkable, and that therefore it was desired to make this delegation.

1582. We believe that it would have been better to go a step further, and make Government and not the Board the responsible authority. The Board is declared under section 14 of the Ordinance to be the "owner", and it seems reasonable to regard it as occupying a position similar to an owner of private land. The rights of a private landowner do not extend to prescribing who may prospect or upon what conditions, but he has the right to be compensated and to appeal to arbitration if the compensation is not satisfactory to him.

1583. It does not seem to us just or advisable to go beyond this point to the extent of requiring the Board to make the conditions. The Board represents the natives, who are only one of the interested parties, and therefore its scope ought to be confined to defending their interests.

1584. For these reasons we recommend that Government should be the responsible authority for issuing prospecting licences and prescribing the conditions, but that the Board should have the right of making representations to the Governor or to the Secretary of State.

Mining from
Reef Claims.

1585. It is necessary under the Ordinance that, before a reef claim can be granted, there must be a discovery of reef. For each discovery, ten claims of 20,000 square yards each may be pegged. Under the original Ordinance of 1925, export of gold from a claim was prohibited, and therefore, as soon as a claim had been proved, it would have been necessary for the holder to take out a lease before he could export. But under the present Ordinance there is no such restriction, and everything can be done on a mining claim which could be done on a mining lease. Although it is issued only for a

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year, it is renewable at will, provided that the conditions are observed. There is therefore no inducement to take out a lease unless it is desired to obtain security for the purpose of raising capital.

1586. A provision that no mining should be allowed off a claim might tend to cramp development by preventing the holder from raising working capital; or else it would lead to a multitude of applications for mining leases on land which might ultimately prove worthless. The natives are compensated for disturbance, the rate payable in the Nyanza Province being a cent a quarter for every square yard of disturbance, or at the rate of nearly ten pounds per acre per annum. This is not a rule, but is a local standard fixed by the Provincial Commissioner, to whom all appeals on the score of inadequate compensation are referable. Consequently, it is observed in practice.

1587. Nevertheless, it cannot be said that the natives like the situation, and for the general security it is advisable that such arrangements should be of short duration. We suggest that mining off a claim should be limited to a reasonable period, after which the claim should either be surrendered or a lease should be taken out.

1588. The type of alluvial mining which has been in progress hitherto in the Kakamega mining area is panning in river beds. Claims are 100 ft. square, and natives are fully compensated. If any native objects to the compensation offered, the District Commissioner inquires into the matter and makes an award; the Provincial Commissioner is the final arbiter.

Alluvial
Mining.

1589. Since considerations of health may preclude residence immediately adjoining the claims, the practice is that alluvial claim-holders make arrangements with natives to allow them to reside on unoccupied land for a payment, which in Nyanza Province has been standardized at the rate already quoted, together with three shillings a month for every non-native resident there in addition to the claim-holder. The payment is normally made to the right-holder, but if the land is grazing commonage, it is made to the Local Native Council. In this respect the natives are on the same footing as the holders of any private land in the Colony, for section 15 (2) of the Mining Ordinance authorizes any prospector, whilst engaged in bona fide prospecting, to erect his camp and such buildings or machinery as may be necessary for the purpose of prospecting.

1590. We notice that a Bill is before Legislative Council which will give Provincial Commissioners power of expelling undesirable persons, and will create advisory boards by whose advice Provincial Commissioners will be guided.

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1591. We consider the arrangements contemplated to be adequate to meet existing circumstances. If it should ever become necessary to set aside areas to be used for residential purposes the provisions which we have already recommended for setting apart could be applied, the Native Council compensating the right-holders and reimbursing itself from rents or camping fees received.

Special
Alluvial
Claims.

1592. We are advised that another type of alluvial mining may shortly make its appearance. Alluvial deposits of gold are not confined to the river beds, but we are informed that practically the whole of the Kakamega mining area could have been pegged as alluvial, since large quantities of gold detritus are found in the surface soil. It is suggested that applications will be made for the operation of schemes on a large scale for diverting rivers and washing off the surface soil.

1593. Special alluvial permits may be granted under the head of Exclusive Prospecting Licences, and are governed by section 20 of the Mining Ordinance (No. 1 of 1931), as amended by section 8 of the Mining (Amendment) (No. 2) Ordinance of 1932. Among the conditions it is provided that the application shall be published in the Official Gazette for criticism.

1594. We suggest that the Lands Trust Board, as the "owner", should receive formal notification of the scheme before it is gazetted for criticism, and should have the right to comment upon the conditions by letter to the Governor or to the Secretary of State. It is further provided in the Ordinance that, in so far as the scheme may entail the use of water, a permit from the Water Authority must be obtained before any water can be diverted or used. Under the Water Ordinance, it is provided that the Lands Trust Board must be consulted. We shall deal with this aspect of the case in the sections now following, in which we discuss the proper functions of the Lands Trust Board in connexion with the Water Ordinance.

Control of
Water in
Native
Reserves.

1595. The general water legislation of the Colony is contained in the Water Ordinance (No. 35 of 1929). But this Ordinance has never been applied, and the present practice is that permits are issued under section 145 of the Crown Lands Ordinance, which provides against the damming of any spring, river or stream or the diversion of any water, except under permit or special authorization. But it is anticipated that the Water Ordinance will eventually be applied, though probably in an amended and simplified form.

1596. As it now stands, the Water Ordinance limits itself by declaring, in section 75, that in any area declared to be native reserve its powers "shall be exercised subject to the provisions of any law for the time being in force relating to native reserves or

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communal reserves''. It therefore becomes in that respect sub-
servient to those sections of the Lands Trust Ordinance which relate
to the use and control of water.

1597. Section 4 of the Lands Trust Ordinance declares all
matters relating to land in native reserves to be in the unfettered
control of the Lands Trust Board. It seems impossible to escape
the conclusion that the control of water which passes over the land
is likewise in the hands of the Board.

1598. But while the Board appears to have an absolute control
of water during its passage through the reserve, we find no indica-
tion in the Lands Trust Ordinance that the Board has any standing
whatever in respect of water which has not yet entered the reserve.

1599. If these things are so, it appears to us that the Board
has at once too much control and too little. If the consent of the
Board is an essential condition before any permit of any kind can
be issued in respect of water in a native reserve, then its power is
clearly excessive in this respect: the Board, as trustee for native
interests, is bound to object if it finds that those interests are
injuriously affected even in a slight degree; it is not concerned
with the interests of the Colony as a whole. For this reason we
consider that the Board ought not to be the final authority. Its
position is rather that of trustee for owners who are minors, and
its rights should be comparable with those of owners on private
land. In equity therefore it has a right to be notified and to enter
objections, but not to be the final judge of the matter.

1600. It seems equally clear that in respect of water which
has not yet entered the reserve, the Board has too little power:

In cases where there has been a diversion of water up-river
and loss has been caused to the reserve, we think that the Board
should have the same rights of protecting its lower riparian in-
terests as an owner of private land would have. In cases where an
owner of private land would be entitled to sue, the Board should
be entitled to sue in the person of the Chief Native Commissioner;
and there should be a similar obligation to be sued by owners
further down the river.

1601. We make no definite recommendation, because an
amended Water Ordinance is in draft, and it would be wise to
await it in its final form before the corresponding provisions of an
amended Lands Trust Ordinance are framed.

1602. We now turn to the consideration of certain administra-
tive difficulties which have been experienced. The present prac-
tice is that the Lands Trust Board and the Local Board concerned
are notified whenever any application for a water permit is made
which might by any possibility affect native interests in the reserve.

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Many of these applications are of a petty character. If it is provided that the Board must be notified on every occasion and must have an opportunity to enter objections before action is taken, the more important work of the Board will become clogged with a mass of petty detail, and there will be unnecessary delay. We are therefore of opinion that a division must be made between "major" and "minor" matters. In minor matters, the Provincial Commissioner should recommend, after consulting the Local Land Board and the local natives concerned, and, if both the Provincial Commissioner and the Local Land Board approve, then the application should be taken as approved in so far as the native reserve is concerned. But if either the Provincial Commissioner or the Local Land Board objects, then the matter should be referred to the Governor for decision. If the Chief Native Commissioner considers the matter to be of sufficient importance to require that the Lands Trust Board should be notified, but not otherwise, the decision should be deferred until the Board has had an opportunity of recording its opinion.

1603. If the matter in issue cannot be classed as "minor", the procedure regarding the consultation and recommendation should be as before, but the Lands Trust Board should be notified and should have the opportunity of recording its opinion by letter to the Governor, and to the Secretary of State. Decision should rest with Government.

1604. The difficulty is to find a suitable definition of "major" and "minor". We shall not attempt it. But it may serve to indicate the general nature of the distinction which we have in mind if we say that the criterion should be whether the effect on the water in the river or stream affected will be of consequence or trivial. It is not a question of capital cost of the work contemplated but of the result. We consider that the Chief Native Commissioner should decide any question of doubt in this respect.

1605. We need not go into details or examine every variation of the problem. But we should perhaps allude to two forms of special cases:—

- (a) It might happen that a major scheme is projected higher up the river, outside the reserve, and that the effect on the reserve will be very slight. In this case, the project would be held to be minor in so far as the reserve is concerned.
- (b) It might happen that a large number of irrigation works, each small in itself, is required in one area and that the cumulative effect on the flow of water in a native reserve lower down the river will be serious. In this case each

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separate application would be minor, and would not concern the Board, but we consider that the Board should be kept informed of the general position so that it should be able to make representations to the Governor and, if necessary, to the Secretary of State. No useful purpose would be served by the submission of returns, unless the Board calls for them, but the Chief Native Commissioner should have the duty of keeping the Board generally informed; in the discharge of this duty he should be guided by any general or special instructions which the Board may issue.

In view of the information which would be supplied to the Board, we see no object in retaining a provision that returns should be forwarded to the Secretary of State.

1606. It may be objected that these proposals do not give the Board so much power as it has under the Lands Trust Ordinance as it now stands. But we are unable to recommend that the Board should retain a power of absolute veto, which might prevent the proper development or conservation of the water supplies of the Colony. The necessary safeguarding of water is, in our opinion, a matter over which Government ought to keep a direct control.

1607. Under section 15 (i) of the Lands Trust Ordinance, the Governor may at any time, with the advice and consent of the Legislative Council, exclude from a native reserve any land which may be required for roads or bridges, railways or tramways. (f) Roads and Railways.

1608. If this method is followed, there is both the general difficulty that the reserve becomes fragmented, and the special difficulty that there must be an addition of land to the reserve to compensate for all the land taken, except the land actually occupied by the "track", which is specially excluded from this provision.

1609. After consideration, we do not believe that it will ever be found necessary or advisable to exclude such land, but that the requirements can be met by a special form of setting apart. We consider that the whole area required should be set apart by the Provincial Commissioner, after reference to the Local Land Board both in respect of the area to be set apart and the compensation to be paid. Power would be reserved to the Governor to settle any matter in dispute. The amount of compensation payable should be assessed as a lump sum.

1610. The Lands Trust Board should have no power of veto in this respect, but should have the power of making representations to the Governor or the Secretary of State. There should be no obligation on Government to delay construction pending the consideration of any objection.

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1611. If a road is classed as a native reserve road, the Native Council should provide from its own revenues the full amount of the compensation assessed, and should have the power to determine the distribution of it to persons injuriously affected.

1612. In the case of a main road or a railway, Government should pay the amount to the Native Council as a lump sum, and the Native Council would determine the distribution to persons injuriously affected.

1613. In our considered opinion the method of annual compensation is not applicable to these cases and compensation must be by payment outright.

1614. In order to make our recommendation clear, it is necessary to state what we mean respectively by a main road and a native reserve road. For the purpose of these sections, we consider that any road should be classed as a main road as soon as it is recognized by the Director of Public Works as a public road for the direction of which he is responsible; but a road made by the Local Native Council on its own initiative should be classed as a native reserve road until the Director of Public Works takes it over.

1615. If a native reserve road, for which the Local Native Council has already paid compensation, is taken over by Government, and a new alignment is made, a question will arise not only of compensating the right-holders in respect of the land covered by the new alignment but also of Government repaying to the Local Native Council the whole or part of the money which it paid out in compensation when the original road was made. In such cases, we recommend that the Provincial Commissioner should make proposals after consultation with the Local Land Board, and that such proposals should be considered by the Central Roads and Traffic Board, the Governor deciding in any case of dispute.

1616. Although we have recommended against the method of excision and compensatory addition in these cases, yet we have to consider the possibility that a large extent of native reserve land might sometimes be put out of agricultural use for the sake of an arterial road in which the natives of the reserve have small interest. We therefore recommend that, if the Board considers that the available agricultural land in the reserve has been reduced by this means below the amount economically required by the people, it might properly recommend to the Governor that an additional area be added. The acquisition of such an area to be added to the native reserve should be regarded as a public purpose for which, if necessary, the Land Acquisition Act could be applied. The area occupied by the road would remain part of the native territory, although subject to the same regulations as are applicable to roads in other parts of the Colony.

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1617. In order that the Lands Trust Board may be able to exercise a proper protection, we consider that information should be supplied to it concerning the amount of land likely to be taken out of agricultural use by any main road which is projected.

1618. Under section 18 of the Lands Trust Ordinance it is provided that "no land in a native reserve shall be declared to be a forest area or demarcated forest without the prior consent of the Central Board". As to this we agree, since the declaration of a forest area would diminish the amount of land potentially available to be taken into agricultural or pastoral use, and native interests might be very seriously affected. But the section goes on to provide that "no rule shall be made in respect of any such forest area or demarcated forest without the prior consent of the said Board".

(g) Native
Reserve
Forest
Reserves.

It appears to us that the Board, having settled the major issue by agreeing to the declaration of the forest, does not need to be consulted further. Rules for protecting and managing the forest are matters of internal administration and control, which, as we shall recommend clearly in a subsequent chapter of our Report, ought to remain in the hands of Government.

1619. In section 8 (3) of the Ordinance, it is provided that all profits accruing from "timber or other forest produce" in a native reserve "shall be paid to the Local Native Fund or, where there is no Local Native Fund, to the Native Trust Fund, or may be paid to any member or members of the tribe concerned who may be considered by the Central Board, after reference to the Local Board, to be entitled thereto".

1620. The point has been raised by the Conservator of Forests that this provision would compel him to pay to the Local Native Council his gross receipts, and that he would then be left without the means to pay staff to administer the forest. It will be many years, and perhaps generations, before the Native Councils, considered generally throughout the Colony, will be able to administer their own forests, and it is necessary that the Conservator should retain the means of control. We therefore recommend that only the net receipts, after all liabilities have been met, should be paid to the Local Native Council.

1621. We may also allude in passing to the curious result which would come about if any attempt were made to interpret this section at its face value, and all "profits whatsoever, accruing . . . from timber" were to be paid to the Local Native Council, or held in abeyance what time the Central Board consults the Local Board as to what member or members of the tribe may receive them. The quaintness of this provision will be realized when it is stated that the Kikuyu export round about £15,000 worth of wattle bark annually, all grown by private owners.

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1622. There is a point which has been raised by many native witnesses and at nearly all *barazas*. They represent that the natives ought to receive preferential treatment and that firewood and building poles ought to be given to them free or sold to them at a cheaper rate than to non-natives. We are unable to support this view. It is the duty of the Forest Department to manage native reserve forest reserves on economic lines, and the Native Council gets the profits. We see no reason to interfere with the discretion of the Conservator to fix whatever prices he considers proper. We understand that, in point of fact, natives are frequently allowed to have firewood free of charge, and poles are sold to them at a very reasonable rate.

(h) Licences of various kinds.

1623. Section 8 of the Lands Trust Ordinance provides that the Governor, with the advice and consent of the Lands Trust Board, may grant licences to "persons not being members of the tribe" in respect of (i) the grazing of cattle, (ii) the removal of timber or other forest produce, and (iii) the taking of sand, lime, stone, etc.; but it is provided in section 7 that no such licences may be issued without reference to the Secretary of State if the Local Native Council or the African member of the Land Board objects.

1624. In respect of the issue to non-natives of licences to graze cattle in a native reserve, we do not consider it necessary for specific reference to be made to the Lands Trust Board on every occasion. We recommend that such licences should be issued by the Chief Native Commissioner or such administrative officers as he may depute. Many of these licences are of a trivial character, and no good purpose would be served by a provision that returns of them should be rendered to the Board, but we recommend that the Chief Native Commissioner should keep the Board informed of all important matters, and in the issue of licences should conform to any general or special instructions which the Board may issue. We see no reason for any reference to the Secretary of State.

1625. We are inclined to recommend that the question whether natives of one tribe may or may not depasture their cattle in the reserve of another tribe should be regarded as a matter between native and native such as would not come under the purview of the Lands Trust Board. We have recommended that such matters be regulated by the native law and custom of the occupant tribe (always supposing that there is no infringement of the quarantine regulations or other ordinance of the Colony). If native custom does not suffice, and further regulation is required, it can be introduced by a rule, which would have the effect of modifying or supplementing native custom. There would, so far as we can see, be no objection to such a rule taking the form of providing for the

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issue of permits by the District Commissioners in certain circumstances. Such a provision would impose no greater strain on native custom than would be caused by several of the rules which are already projected to regulate the *githaka* system, and which would give the District Commissioner wide powers, which he would not have had under native custom, for instance a power to order *ithaka* to be demarcated and registered.

1628. We recommend that, subject to any general or special instructions of the Lands Trust Board, the Chief Native Commissioner and such administrative officers as he may depute should have the power to issue licences under section 8 (b) (2) for the removal of timber. Such licences may be for very minor purposes, for instance a licence to cut one tree for a dugout canoe. Other licences might be for very large quantities of timber. In the latter case, we recommend that the Chief Native Commissioner should, at his discretion, refuse to issue the licence until reference has been made to the Lands Trust Board. Presumably, some of the most important licences of this kind would be those issued to the Railway and its fuel contractors, and it may therefore be necessary to reserve a power to the Secretary of State to override the veto of the Board, if it should have the effect of depriving the Railway of vital supplies.

1627. In respect of licences under section 8 (b) (2) for the removal of sand, lime, stone, etc., we have to remark that these are often of a trivial character, and it seems quite unnecessary that the Lands Trust Board should normally be troubled with them. We consider that the Provincial Commissioner should have the power to issue such licences, and to delegate such powers to District Commissioners. We would not even make it statutory for the Local Native Council or the Local Land Board to be consulted, although it might be a matter of administrative direction that they should be consulted in all save trivial cases.

1628. We consider that the protection of native interests in respect of all classes of licence mentioned in this section would be adequately secured by the following procedure:—

- (a) Licences for the purposes contemplated in section 8 of the Ordinance to be issued by the Provincial Commissioner; or by the District Commissioner, if the power is delegated to him by the Provincial Commissioner.
- (b) An administrative direction to be given, in such detail as may be thought necessary, that licences should not be issued without prior consultation of the Local Land Board and of the natives concerned, except where the amount of loss or disturbance likely to be caused is, in the opinion of the issuing officer, trivial.

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- (c) All licences to specify the terms and conditions of compensation for disturbance or other loss, and to provide that any party aggrieved on the score of inadequate compensation may appeal to the Provincial Commissioner, who shall make an award after consulting the Local Land Board; and that the licensee binds himself to abide by the award.
 - (d) Licences normally to be for a period of one year or less, but exceptions to be allowed if good cause is shown to the satisfaction of the Chief Native Commissioner.
 - (e) The Chief Native Commissioner to keep the Lands Trust Board informed of all matters which he considers to be of sufficient importance to communicate; and to furnish any information which the Board may desire.
 - (f) The Chief Native Commissioner to be guided throughout by any general or special instructions which the Lands Trust Board may issue for the protection of native interests.
 - (g) Except as provided in section 1626 above, no licence to be issued to which the Lands Trust Board objects.
- (*Note.*—We realize that licences would generally be issued before the Lands Trust Board hears of them, except in important cases referred to it by the Chief Native Commissioner. We view this position without misgiving, because we are confident that the Chief Native Commissioner would refer cases in which reference is desirable. If it should occasionally happen that a licence is issued to which the Board would have objected, the objection of the Board would be valid against renewal.)

1629. In the foregoing recommendations we have endeavoured to provide protection for native interests, without so hedging the position about with safeguards that the freedom of Government to develop the reserves to the best advantage would be seriously impeded.

1630. Before concluding this chapter, we wish to allude briefly to two matters which are of considerable importance to the smooth working of our recommendations in respect of the acquisition of plots in native reserves. They are : (a) Delegation ; and (b) Survey.

Delegation.

1631. In respect of the setting apart of land and in respect of the leasing of land we have recommended that the Lands Trust Board have a power of veto, if the land to be set aside or leased exceeds 10 acres. We do not consider that it should be necessary to trouble the Board with every case in which it is proposed to set aside or let land above ten acres, and we propose that the

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Board should have the power to delegate to the Chief Native Commissioner the power of assenting on its behalf to the setting apart of land up to one hundred acres, or the leasing of land up to fifty acres. If the Chief Native Commissioner should feel himself unable to assent to the lease or the setting apart in any case, he would refer the matter to the Board with his recommendation.

1632. These provisions would obviate the necessity of ordinary mining leases having to be referred to the Board, and would relieve it of all save important matters.

1633. We are amply satisfied that too many safeguards would defeat their own end. It is the broad aspects of native land policy for which the protection of the Board is principally required, and we consider that it would be a mistaken conception of its duties if it is thought that it is called upon to exercise a constant vigilance over the actions of Government in routine matters.

1634. We do not consider it necessary that land should be surveyed before it is set apart, but that a suitable and cheap demarcation on site should suffice, and a simple record should be kept in the District Commissioner's office. Similarly with leases of areas for such purposes as school and church plots, or for trading plots or mill sites, we do not consider survey necessary, but any party desiring to have the plot surveyed should pay for it. But it will probably be advisable that survey should be required in the case of leases to non-natives, when the plot exceeds a certain minimum, say, forty acres in extent. Survey..

CHAPTER IV.

LAND TENURE BY NATIVES IN THE RESERVES.

Crown Land
or Native
Land.

1635. The point has been raised by several native witnesses, and sometimes as a general opinion of natives assembled in *baraza*, that native reserve land should be conceived as belonging to the natives and not to the Crown. The legal position, as laid down in the "Barth Judgment" of 1921 (Original Civil Case 626/1921, reported in Vol. IX, *East Africa Law Reports*, pp. 102-105), is that as a result of the Kenya Order in Council, 1921, combined with the Crown Lands Ordinance, 1915, it is Crown land, and that the legal position of the native is that he is only a tenant at will of the Crown. But it is clear from contemporary despatches, and especially from Sir Henry Belfield's Despatch No. 144 of 25th August, 1914, that this legal position was only created in order that native rights might be the better safeguarded and defined.

1636. This legal position has never been popular with natives, and, without going into the question whether the Crown Lands Ordinance, 1915, was a competent instrument to do what it purported to do, it must be admitted that to deprive a man of his rights in land for the sake of protecting him is a method of procedure which is liable to be misunderstood.

A Proposal
stated for
Discussion.

1637. We have therefore given consideration to the question whether these measures were necessary or need now be continued.

1638. For the purpose of examination, we state the following proposition :

1639. That the native lands as a whole (Class A) be not styled Crown land but Native lands, the *nuda proprietas* being deemed to lie with the native population generally, but vested in a trust and subject to the sovereignty of the Crown and its general powers of control. The rights of particular tribes, groups, families and individuals should be covered by a declaration that they shall have all the rights and powers in respect of land which they have under native custom (as it is, or as it may become), in so far as they are not repugnant to the Lands Trust Ordinance or rules under it, or any other law or ordinance of the Colony.

1640. We have not attempted an exact drafting, but the above description should suffice to make the meaning of the proposition clear.

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(Note.—The twofold nature of the Trust, as being partly “protective” and partly “constructive” in character, and the distribution of functions between the Lands Trust Ordinance and the Government are matters which we shall discuss in the next chapter.)

1641. Before recording our recommendation, it is right to consider possible objections. Certain objections have been brought to our notice, which deserve consideration. Criticism of
the Proposal.

1642. The first objection is that, although the rights of the Crown might seem to be adequately safeguarded, some flaw might be detected, and it might be found that the Crown had parted with rights essential to the proper control and guidance of land tenure among primitive peoples.

1643. It is even conceivable that, although the wording of the clause itself might be completely adequate, its validity might be contested on the ground that the native rights which it seeks to control pre-exist the Lands Trust Ordinance and are independent of it.

1644. We are of opinion that this objection can be adequately met if the position is clearly defined and safeguarded by Order in Council. We agree that it is absolutely essential that Government should have the power to control and direct, and, where necessary, to modify the system of land tenure, both in respect of the acquisition of land for public purposes and for purposes of trade and development, and also in respect of the tenure of land as between natives themselves. It would be necessary that the Order in Council should make this abundantly clear.

1645. The second objection which is urged against the proposal is that natives are unable to understand the distinction between tribal ownership of land and tribal sovereignty. This difficulty is particularly marked among the Kikuyu, and we have already alluded to it. Administrative officers who know the tribe are apprehensive that, if the land is called native land, the natives will interpret the position in the sense that they are, as it were, a separate entity independent of the Government of Kenya, but submitting to a temporary tutelage. We believe this apprehension to be very well grounded. But we do not regard the objection as insuperable, since it ought to be possible for a declaration to be made in unmistakable terms which would make it clear that His Majesty King George (and his successors in title) is the sovereign ruler of the whole country, and that the native land remains an integral part of the Colony in all respects.

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1646. We consider that the dislike of the natives to the land being called Crown land is natural. They cannot understand that it is largely a conveyancing measure, and they believe that they would be more secure if the land is called native land.

1647. We foresee that any conveyance of the land in freehold or otherwise to the natives would cause great complications. It would, for instance, be extremely difficult to distinguish between the rights enjoyed by a tribe and by the individual members or groups of which the tribe is composed. In order to avoid this difficulty, it is suggested that there should be no conveyance, but that those sections of the Crown Lands Ordinance, 1915, and the Kenya Order in Council, 1921, which, in combination, were declared by the Barth Judgment to have had the effect of making the land Crown land, should cease to be operative in respect of any land in the Native Reserves, Class A, so that the tenure would revert to its former condition, subject to the sovereignty of the Crown. This would create a state of affairs in which the land might properly, though somewhat vaguely, be called native land.

1648. While such a position might cause concern to persons who set store by precision of definition, we see no advantage in attempting to define in terms of English jurisprudence conditions of native tenure to which they are inapplicable. The practical point is that it should be possible for a system of land-holding to be built up from a basis of native custom, and we need not concern ourselves with abstruse questions of ultimate proprietorship.

Recommendation.

1649. After considering all these points, we recommend: (a) That the rights of the Crown to control and dispose must be adequately safeguarded in every respect; (b) That it must be made perfectly clear to the natives that the Crown has these rights; (c) That Class A land be called native land; and (d) That the position be declared and safeguarded under an Order in Council.

Tribal vs. Individual Tenure.

1650. On the question raised on the first term of reference, whether the tenure of land should be tribal or individual, we recommend that the tenure of each reserve should be built on the basis of the native custom obtaining therein, but that it should be progressively guided in the direction of private tenure, proceeding through the group and the family towards the individual holding.

Alteration of Custom.

1651. While we do not consider that either the Native Councils or the Native Tribunals should have the power to alter custom in respect of the tenure of land, we can see some utility in the Native Council having the power, subject to the prescribed sanctions, to make a formal declaration that custom has become altered in any respect. In this way, when a change in practice has been adopted

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and has become customary with the main body of the natives, there would be a means of proclaiming it, which would have some effect in bringing the stragglers into line.

1652. But the institution of settled Government, the fixation of boundaries, the introduction of money, the increase of population, and the general industrialization of the country have caused and are causing profound changes and even disintegration of native law and custom. The function of Government cannot be discharged merely by marking and proclaiming the changes as they occur. Conscious regulation is necessary. It may be impossible to resist the currents of change, but at least an attempt should be made to direct them into the desired channels.

1653. Some witnesses, notably Dr. Leakey and Mr. McGregor Ross, have stressed the dangers of attempting to introduce modifications into a native system by rule. We fully appreciate those dangers and realize that, even when the ground has been explored by exhaustive study and the utmost caution has been exercised, the rules will have unexpected repercussions and many mistakes will be made. Nevertheless, we are impressed in an even greater degree with the certain misery which will result if a policy of drift is pursued.

The Need for
Rules.

1654. Comparative study of the difficulties encountered in other countries should enable Government to foresee and guard against dangers which are hidden from the natives. Fragmentation both of land-holding and of cultivation (an evil which in many parts of India has proceeded so far as effectively to defy all attempts at economic cultivation) is already becoming marked in Kikuyu and parts of Kavirondo, and threatens to become acute in Southern Kikuyu within a generation.

1655. It is futile to imagine that an undirected mass evolution can solve the many new problems, which have resulted from settled Government and the impact of an industrial civilization on a primitive people, and are entirely outside the range of tribal experience. They occur both in the holding of land and in the use to which the land is put. Problems of the former class are: fragmentation, uneconomic subdivision, and insecurity of tenants; and an acute problem of the latter class is overstocking. The things themselves—fragmentation, subdivision, tenants, and cattle—have always existed, but the recurrence of tribal wars and of human and stock diseases, and the frequent migration of peoples and the expansion and contraction of boundaries prevented the problems from arising. Government, by the very act of governing, has created the problems, and it is not unreasonable to expect that Government should solve them. It must take and use the power to make rules.

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**Method of
Making Rules.**

1656. Great caution will be needed in the making of rules. It is important, in so far as it may be possible, to prepare the way by education and experiment. But native opinion will always be conservative and slow to appreciate the need for changes of which it has no experience. The need may be urgent, and therefore it will sometimes be necessary to introduce rules even against the weight of public opinion. But such a step would only be justified after the most careful consideration, and the natives are entitled to be protected against the possibility of rash or ill-considered reforms.

1657. We therefore recommend that, when representations have been made to the Provincial Commissioner that rules are necessary, they should first be debated at a District Commissioners' meeting, the Provincial Commissioner presiding, and a record of the discussion should be kept. Reference should then be made to the Local Native Councils and the Local Land Boards concerned, and records of their discussions should also be kept. The rules should then be debated a second time by the District Commissioners in the light of the criticisms received. The draft rules should then be sent to the Chief Native Commissioner for discussion at a Provincial Commissioners' meeting, and then to the Governor, together with the records of all these discussions and the Provincial Commissioner's recommendations. The Governor should then have the power to gazette the rules. Notification should be sent to the Lands Trust Board, and a power of disallowance should lie with the Secretary of State.

1658. Even after they have been gazetted, the rules should not be automatically applied, but the Provincial Commissioner should have the power to apply them or any of them, by further notice in the Official Gazette, either to the whole province or to any district or to any part of a district.

1659. We are aware that the course recommended in respect of debate and discussion would probably be pursued as a matter of practice, even without any statutory provision to that effect. But the natives will feel more secure if the procedure to be observed is fully set out in the Ordinance.

1660. The provision that the rules may be applied in the first instance to a part of a district should prove very useful in such matters as the registration or demarcation of right-holdings, whenever such a step may become desirable. Small flaws in the arrangements will probably be found when they are applied in practice, and will more easily be rectified if the rules are first tried out in a comparatively small area.

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1661. We do not consider that it concerns us to indicate in detail what particular rules are required. If we had regarded that as part of our duties, we should have had to spend some additional months in taking evidence. We have, however, made several allusions to what we regard as the most important matters (*vide* sections 501-535 above).

The particular Rules required.

1662. We record no very definite opinion regarding the advisability of a register of right-holdings in any particular area. In most districts of the Colony such a step would quite obviously be premature. We note that both the Kikuyu Land Tenure Report and the North Kavirondo Land Tenure Report were in favour of a register, but we have evidence to the effect that, after further inquiries, administrative officers in North Kavirondo are agreed that no steps in that direction are at present practicable in that district.

Registration and Demarcation of Right-holdings.

The weight of the native opinion as expressed to us, both in North and Central Kavirondo, was clearly against a register, although the Kavirondo Taxpayers' Welfare Association and a few others held a contrary opinion (Evidence, pp. 2139-2141).

Opinion in Kikuyu Province appears to be more open. Some proposed rules for the regulation of *ithaka* were drafted by the late Chief Native Commissioner (Mr. G. V. Maxwell), and we note that in the seventh draft rule it is stated: "When directions have been issued by the District Commissioner for the marking out of the boundaries of various *ithaka*, he shall establish a register, to be known as the Githaka Register." The District Commissioners, in debating this matter, proposed to alter "shall" to "may".

1663. The only opinion which we wish to record on this point is that, while we have not enough evidence before us to say whether a register of *ithaka* is or is not desirable at present, we regard a conscious advance towards private right-holding to be generally desirable, if land is to be developed to the best advantage, and we are inclined to think that the experimental introduction of a register in a part of the Kiambu district on the lines recommended in the draft rules would be of value.

1664. But demarcation on site is certainly more valuable at this stage than registration, and we call attention to the suggestions which have been made to this end, especially to the rules proposed by Mr. Maxwell. We take this opportunity of saying that the means of demarcation should be simple, and that the employment of surveyors in native reserves should seldom, if ever, be necessary under present conditions as regards native holdings.

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1665. We consider that a good case exists for the application of rules to extensive parts of the Kiambu district ordering the demarcation of *ithaka*; of right-holdings; and possibly of tenancy holdings by some simple distinctive method. There is ample justification for selecting this district for exceptional treatment, since the accident of position as the well as the peculiarities of its customs and traditions of land-holding render its problems exceptionally difficult. The aspirations of these natives towards a more individual form of tenure deserve to be fostered, under adequate safeguards, and the lessons learnt here will afterwards be of value to other native areas as they also begin to advance in the direction of private ownership.

Settlement of
Disputes.

1666. Disputes are at present settled under the machinery provided by the Native Tribunals Ordinance, and we recommend no change.

Rights of
Protection in
Respect of
Trespass.

1667. We believe it is a fact that a tendency has lately been evinced in some districts, notably Kiambu, for natives to treat the presence of Europeans in the reserves as if it were trespass. Cases have occurred in which Europeans, who have been peacefully fishing in the rivers, or picnicking on unfenced land, or even walking or motoring on the roads, have been challenged by natives and told they have no right to be there. We consider that while natives are entitled to protection under the ordinary law of trespass against trespass on fenced land, any person should be entitled to proceed along any road, track, or footpath, or even any unfenced uncultivated land, and to picnic or camp on any unfenced land not planted in seasonal crops, provided that any damage is made good, and that non-natives should not camp in the same place in the reserve for more than forty-eight hours without a permit from the District Commissioner. We consider also that fishing should be allowed in all rivers and from the banks of all rivers in the native reserves, subject to the possession of a fishing permit and subject to the law of trespass.

1668. Judging from the evidence which we have received, we believe that it is necessary that the position should be clearly defined in the Ordinance or by rules under it.

1669. We wish to invite especial attention to our recommendations in Chapter XV of Part I of our Report, in which we record our opinion that areas added to the Kikuyu Reserve should certainly not be used as grazing commonages, but that the land should pass into private ownership by groups or individuals (sections 543-547).

Use of Areas
added to the
Reserve.

1670. To some extent these remarks will be found to apply to other reserves besides Kikuyu, and the emergence of private rights is generally to be encouraged. We wish to record a comprehensive

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condemnation of large grazing commonages, which are frequently used as a species of bank for the storage of bride-price. Even the areas added expressly for the purpose of accommodating cattle, while overgrazed areas of the reserve are rested, should not be used as grazing commonages free to all alike without restriction, but should be used on an organized plan. Ultimately, when the immediate purpose has been fulfilled, and the locations of the reserve have been reconditioned, they will probably have to contain their own live stock, and the area of the block addition, if of a permanent nature, will become available to receive a resident population, and private rights will gradually appear.

CHAPTER V.

THE APPROPRIATE METHOD FOR THE PROTECTION, ADMINISTRATION AND CONTROL OF LAND IN NATIVE RESERVES.

Object of the
Chapter.

1671. In the foregoing chapters we have made a number of recommendations regarding the protection, management, administration, control and development of land in native reserves, and it will have been noticed that we have regarded certain functions as being appropriate to the Provincial Administration and the Government generally, and others to the Lands Trust Board. The object of the present chapter is to show the basis on which this distinction is drawn; to summarize the duties on each side; and, finally, to make our recommendation as to the constitution of the Lands Trust Board.

The respective
functions of
the Lands
Trust Board
and the
Administra-
tion.

1672. The general basis of the distinction is that the responsibility of the Lands Trust Board should be to fulfil the protective need, and that of the Administration to discharge the requirements of the constructive need.

1673. These needs are respectively defined in the letter appended to the Report of the Hilton-Young Commission addressed to the Secretary of State on the subject of the Lands Trust Bill, and signed by Sir R. Mant, Sir G. Schuster, and Mr. J. H. Oldham, where it is stated :—

“ The first and principal need, which may be described as the ‘protective need’, is to fix the areas to be set aside, and provide secure protection for the preservation of the beneficial rights over such areas to the natives.

“ The second and almost equally important need, which we will call the ‘constructive need’, is to provide for the actual use of land in such a manner as will be of the greatest benefit to the natives.”

1674. A division of functions in this way does not simply mean that the Lands Trust Board is responsible for protecting the boundaries and the Administration is responsible for whatever happens inside them. Internal development undertaken by the Administration in pursuance of the constructive need might have aspects which require that the protection of the Board should be invoked to safeguard the rights of groups, or families, or individuals affected. We have therefore endeavoured to secure to the Lands Trust Board all

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powers essential to it for the exercise of adequate protection, without hedging the position round with a host of meticulous restrictions, which would hamper the Administration unnecessarily in the performance of its duties.

1675. In the course of our examination, *seriatim*, of the various problems, we have already stated our recommendations regarding the duties proper to the Lands Trust Board in each case. We shall now state them in summary form.

Duties of the
Lands Trust
Board.

1676. Great care is taken under the Ordinance that the total area of the reserves shall never be diminished. To this end, they are vested as a trust in a Lands Trust Board, whose duty in this connexion is merely to preserve the boundaries intact. There is also provision that the boundaries may be extended (under section 2 (2) of the Ordinance), but this is done by the Governor, subject to the approval of the Legislative Council, and the Board is not concerned except to the extent that, once the land has been added, it becomes part of the trust. In respect of exclusions, for which provision exists under section 15 (i) of the Ordinance, the Board has a more active function, and exclusions cannot be made unless the Board advises and consents. But we have already expressed the opinion that the method of exclusion would generally be unpopular, and resort should seldom, if ever, be had to it.

(i) In respect
of the
Protection of
Boundaries.

1677. We have contemplated (section 1539) that very exceptional cases might occasionally arise in which land is required for an important public purpose, and no satisfactory method can be found for securing it either by exclusion or by setting apart. In such cases, we have recommended that it should be possible, on the direction of the Secretary of State, for the provisions of the Land Acquisition Act or similar legislation to be applied. In such case, the Land Board would express an opinion but would not have the final voice. But it is expected that such cases would be of extremely rare occurrence.

1678. It is admittedly a weak point in the Ordinance that no machinery exists for making exchanges, but even when an amendment has been introduced to allow for them, they will be of comparatively rare occurrence. It is true that at the moment there are a number of small exchanges to be conducted, but they arise mostly from misconceptions or errors which were brought to light by the survey of the boundaries, and, when once they have been rectified, subsequent changes would seldom be needed and could generally be by mutual lease. We have recommended (section 1475) that exchanges by means of exclusions and additions should not be made unless the Board agrees.

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1679. In respect of exchanges by mutual lease and in respect of extensions of boundaries by lease, we have recommended, among other safeguards, that they shall not take place unless the Board agrees (section 1474).

(ii) In respect
of Setting
Apart.

1680. We have recommended, among other safeguards, that no land in excess of ten acres shall be set apart or leased except by agreement of the Board, but that the Board should be able to delegate to the Chief Native Commissioner the power of assenting on its behalf to the setting apart of land not exceeding 100 acres, and the leasing of land not exceeding 50 acres (section 1631).

(iii) In respect
of Licences.

1681. The Board would have the power to issue general or special instructions for the safeguarding of native interests which would be affected by the granting of licences for the purposes specified in the Ordinance, but, subject to such instructions and to the safeguards stated in section 1628 above, the duty of issuing or refusing any particular licence would rest with the Administration.

1682. In respect of licences connected with mining, the Board would not have a power of veto, but should be able to make representations to the Governor, or to the Secretary of State. In the case of special alluvial claims, we have recommended that formal notification should be sent to the Board before the scheme is published in the Gazette for criticism (section 1594).

1683. In the case of water permits, we have recommended that applications be divided into major and minor, and that reference to the Board in minor cases should be unnecessary, except at the instance of the Chief Native Commissioner. In major cases, reference should be made to the Board, which should have the power to object and to make representations to the Governor or to the Secretary of State, but should not have the power to decide. Details of this recommendation are given in section 1602 above.

We have made a further recommendation, at section 1600 above, that the Board should be capable of suing or being sued in matters affecting riparian interests.

(iv) General
Power of
Supervision

1684. Besides the protection which the Lands Trust Board would be required to extend to the natives in the particulars enumerated above, we conceive that the terms of the trust, dedicating the land to the "use and benefit" of the natives, imply that the trustees must have the power to assure themselves that the land is actually being devoted to the purposes for which it was assigned. Therefore, although we shall recommend that the internal management, development, administration and control of the native lands

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should rest, as it were in a separate trust, with Government, and that Government should have the sole responsibility in respect of the "constructive need", we shall nevertheless recommend that the Lands Trust Board should have the power and duty of making representations to the Governor, and, if necessary, to the Secretary of State, if it considers that the land is not being devoted to the use and benefit of the natives in conformity with the terms of the trust or is not being properly conserved and developed.

1685. The above enumeration shows the duties proper to the Lands Trust Board as protector of the native lands. They will from time to time include the consideration of extensions, exclusions, exchanges, major leases, and important licences. But, taken in sum, the work is not arduous, and the occasions will be rare when practical issues arise for settlement. The chief requirements in any Board which is appointed as trustee in this regard, i.e. for conservation as apart from development, are independence and a sense of justice. No high degree of local knowledge is required; and the one essential point is that the Board shall command the respect and confidence of the natives and of the Colony at large.

Qualities
necessary in
the Lands
Trust Board.

1686. In order that this might be secured to the fullest extent. Sir Edward Grigg had envisaged the position when the duties of the Board would "pass by general agreement into the hands of a higher East African authority". It is a point for consideration whether it is necessary that the members of the Board should reside in Africa at all. We shall defer our recommendation on this matter for the moment, until we have reviewed the requirements of the constructive as well as the protective need, and made good our contention that the matters of internal development and control are the duty of Government and not of the Lands Trust Board.

1687. The conditions obtaining in native reserves in respect of the use of land have been comprehensively summarized in the first chapter of this part of our Report. It would be quite impossible for anybody to read that chapter and not be convinced that the "management, development, administration, and control" of native lands is a most complicated task, requiring great local knowledge, administrative skill, patience and experience, and much study. The need for caution and the need for energy are equally obvious, and above all, perhaps, the need for authority. The whole machinery of administration must be called in, and it would be quite impossible for a Lands Trust Board to attempt to deal with the matter except through the Provincial Commissioner. But the Provincial Commissioner and his officers cannot serve two masters, and it is not practicable to effect a strict division between their functions as

The Require-
ments of
Internal
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and Control.

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land development officers and the rest of their duties. For instance, orders given under the Native Authority Ordinance for the construction of roads or bridges, or to prevent the wasteful destruction of timber, or to regulate the movements of natives from one location to another, relate, in some sense, though not exclusively, to the management and control of land. It would be ridiculous to expect the Provincial Administration to conduct all these matters in subordination to the Lands Trust Board.

1688. The difficulty is still more obvious when we consider it in its political aspect. A dispute about land, especially in Kavirondo, often involves a location boundary, and the political sphere of a headman's control is as much in the argument as the question of land to be used and cultivated. The conception of land tenure has barely yet emerged to a point at which it can be distinguished from political control, and power and proprietorship are still largely confused. It is obvious that the settlement of disputes of this kind must rest with Government directly, and no Land Board should be expected to take the responsibility.

1689. If one regards the matters from the judicial aspect and considers the settlement of land disputes between natives, the same conclusion is reached. These disputes are heard in the Native Tribunals, and under the existing Ordinance the Provincial Commissioner is the final court of appeal. It would be an impossible position if, after having given a judgment in one sense in a dispute, he then had to take action in an opposite sense at the direction of the Board, which might differ from him in opinion. It is easy to say that such a position would never arise, but natives are adepts in playing off one authority against another.

1690. On all these grounds we are satisfied that the management, development, administration and control (to use the words employed in sections 4 and 6 of the Ordinance) should remain with the Administration in respect of all matters arising between native and native in the reserves. The direct authority would be the Provincial Commissioner, and his responsibility should be to Government, and not to the Board.

General Statement of the Conclusions.

1691. The conclusions which we have reached, and which are supported by the above arguments, are as follows:—

- (i) The duty which Government has towards the natives to protect them in the use and enjoyment of their land has two essential aspects:—
 - (a) Conservation of the reserves generally for their inhabitants; the safeguarding of the integrity of the boundaries; and the protection of private rights.

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- (b) Management, development, administration and control of the land with a view to improvement.
- (ii) The aspect of conservation may appropriately be entrusted to a Lands Trust Board, the chief requirements of which are that it should be independent and just, and should command universal confidence. It need not have special local knowledge.
- (iii) All power of management, development, etc., must be preserved in the hands of Government, the immediate authority being the Provincial Commissioner, working through his staff. His responsibility must be to Government, but for the better safeguarding of native rights certain powers of veto and representation must be secured to the Lands Trust Board.

1692. We have left the question of the personnel of the Board until last, because it seemed logical first to review the duties which have to be performed. We can see nothing in the list of duties which demands of necessity that the Board should have close local knowledge or should necessarily be resident in Kenya.

Personnel of
the Lands
Trust Board.

1693. The present constitution of the Board is determined by section 3 of the Lands Trust Ordinance, which provides a membership very like that of the Executive Council. Some of the witnesses before us, who are members of both these bodies, have admitted that they experience a difficulty in attuning their minds to the capacity in which they are acting at the moment, especially when a case arises in which the advice they have to tender to Government in their official capacity, after taking all aspects of the matter into account, does not correspond with the attitude which they have to adopt as trustees considering only the native interests. We do not consider that any official should be placed in such a position. Nor, when we reflect that occasions may arise in which the native reserves may have to be protected even against the Government of Kenya, do we think it right that the Board of Trustees should correspond so closely with the Executive Council. We are most strongly in favour of an independent Board in all matters relating to the protection of the native reserves, although we agree that matters of internal administration and development should remain in the hands of Government.

1694. We believe that public confidence in the Board will be greater if the members have no direct concern with the political life of the Colony. But it would be difficult to find in Kenya men of eminence and distinction who are not already involved in some way or other in politics, which, in so small a community, are almost a part of daily life. We do not say that such men could not

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be found, but they would have to be chosen from an extremely limited field, and that in itself might tend to some extent to impair their authority and the confidence reposed in them.

1695. A further consideration is that members of the Board will be, in a sense, the representatives of the Privy Council, since they will be the protectors of a trust, of which, as we recommend, an Order in Council would declare the principal terms and nominate the trustees. They will therefore, as carrying out the duties imposed on them by the Privy Council, be to that extent representatives of Government, though independent of the Government of Kenya. They would be able in certain specified classes of case, should occasion arise, to interpose a veto on leases or licences which the Government of Kenya had recommended to be granted. If the members of such a Board are resident in Kenya, the position, if not actually embarrassing to Government, would certainly be very hard for the natives to understand, and would be more likely to bewilder them than inspire confidence. The point of greatest importance is that the Board should command the confidence of the natives, and it is essential that it should be removed from the sphere of local politics. If it is resident in Kenya, there is always the danger that interested parties will make capital out of the contention that there are too few, or too many, natives or settlers or officials or missionaries on the Board. Without wishing to labour the point, we do not think that it can be denied that a Board consisting of trusted and impartial men resident in England would carry more weight than a Board resident in Kenya.

1696. The strongest objection which we have heard urged against such a Board is that it might lack the means of discovering whether the reserves are in fact being conserved and utilized for the use and benefit of the natives. It is, for instance, the case that some native tribes bid fair to render their reserves quite unfit to support human life if they continue their practice of overcrowding them with herds of useless live stock. It is represented that the trustee, even on the protective side of the trust, should not allow such a state of things to occur without protest, or without making representations, if Government fails to deal with the situation. We consider that the Board is entitled to inform itself of the situation, and we recommend not only that it should receive periodic reports from Government on any matter affecting the condition of the trust, but also that it should be able, if it ever conceived it to be necessary, to appoint representatives to inspect and report to it directly. If this recommendation is accepted, we are of opinion that the objection disappears.

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1697. We think that the advantages and disadvantages of a Board in England and of one in the Colonies are fairly evenly balanced, except for the much greater confidence which a Board in England would enjoy in the eyes of the native unless natives were to be members of it. We are definitely of the opinion that many years must elapse before a class of Kenya-minded natives has grown up from whom it would be possible to select fitting representatives as members of a Board which has to deal with the interests of the natives of Kenya as a whole. For these reasons, we are inclined to the view that a Board in England would be preferable, and Mr. Hemsted would make it a definite recommendation.

We recommend that the Order in Council which defines the trust should also nominate the trustees, providing at the same time for the method of succession and other matters relevant to the appointment.

CHAPTER VI.

THE WORKING OF THE LANDS TRUST ORDINANCE.

The Term of
Reference.

1698. The term of reference is as follows :—

“ To review the working of the Native Lands Trust Ordinance, 1930, and to consider how any administrative difficulties that may already have arisen can best be met, whether by supplemental legislation or otherwise, without involving any departure from the principles of the said Ordinance.”

The Principles
of the
Ordinance.

1699. The first question which we have set ourselves to answer is : “ What is the basic principle of the Ordinance? ” And we have arrived at the conclusion that it is security for the natives in respect of their land. The Report of the East African Commission in 1925 gave great prominence to this question. It stated :—

“ In order to implement the White Paper of 1923, which so definitely affirms British trusteeship for natives, it seems necessary that a further instrument should be issued, laying down the terms upon which the Crown holds native lands in Kenya, and the principles upon which the native estates should be managed on their behalf.”

1700. After dealing with some questions of detail, the Report proceeds :—

“ We believe that, if this recognition of right and these proposed safeguards were adopted in Kenya, a great deal of the present misunderstanding and unrest would be allayed.”

1701. It is clear from the context, which alludes to a meeting with the Governor in Nairobi, that an Ordinance was already in contemplation, and we consider that the above passage correctly reflects the general objects for which it was to be enacted. Two main objects are stated or implied, and both of them are concerned with security. The first relates to the native lands as a whole, and requires that the terms on which the Crown holds them for the natives should be defined, while the second relates to internal native land or “estates”, and requires that the principles of management should be laid down.

The Original
Intention of
the Ordinance.

1702. We may conclude therefore that the original intention of the Ordinance was to create security for the natives, both in respect of their tribal lands regarded as a whole, and in respect of private rights under native law and custom. We may perhaps refer to these two aspects as the tribal aspect and the private aspect.

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1703. The Native Lands Trust Ordinance, 1930, creates a trust in respect of certain lands reserved for the use and benefit of the native tribes of the Colony for ever. The lands are those which are described in Government Notice No. 394 of October, 1926, and the use of the word "respectively" in section 4 of the Ordinance is generally understood to imply that there are separate trusts for each of the several areas declared to be native reserves in the said notice. This, however, is a matter of inference rather than of direct statement, and is not completely satisfactory, because under the notice there are some tribes which have more than one reserve, and some reserves which have more than one tribe. No provision is made for altering these boundaries except to the very limited extent which the regulations about exclusion and addition allow.

The Tribal
Aspect.

1704. According to the grouping followed in the gazettelement, there are twenty-four units separately gazetted.

The several
Native
Reserves.

1705. The first is called the North Kavirondo Native Reserve. Most of it is inhabited by the tribe known as the Bantu Kavirondo, but there are also other tribes, such as the Wakidi and the Elgoni and a section of the Masai, who inhabit certain locations. It would therefore be inexact to call it a reserve for a tribe.

1706. The next two reserves on the list are the Central Kavirondo and the South Kavirondo. The chief tribe found in both these reserves is the Luo (Nilotic Kavirondo), who inhabit both sides of the boundary between the two reserves, which therefore is not a tribal boundary. The Kisii are a large Bantu tribe inhabiting the eastern locations of the South Kavirondo district, and the Watende and other minor tribes are found in the southern areas. These reserves therefore cannot be called tribal in any strict sense. The phrase employed in section 4 of the Ordinance—"the tribes for whom they have, respectively, been reserved"—might be thought to imply that the "South Kavirondo Reserve" was only for the South Kavirondo, but it is obvious that it was not intended to exclude the Kisii and other tribes which inhabit it, although they have not been specified.

1707. The next on the list is the Nandi Native Reserve, and the next is called the Lumbwa (Belgut, Buret and Sotik) Native Reserve, being apparently one reserve shared by three units of the same tribe.

1708. The sixth on the list is a comprehensive gazettelement of the native reserves of the Kerio Province. Although they are all included within one boundary, they are not called one reserve, but the Suk, Kamasia, Marakwet, Elgeyo, and Njemps Native Reserves. Presumably therefore each of them is devoted to the use and benefit

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of the tribe concerned "for ever", and the position of the boundaries between them must be a matter of some moment. Yet it has not been specified.

1709. The seventh on the list is the Masai Native Reserve, and the eighth, ninth, and tenth are called the Kiambu, Fort Hall, and Nyeri Native Reserves. It is interesting to note that none of these last three are specifically stated to be reserved to the Kikuyu tribe, which, except for the presence of a few Dorobo, inhabits them almost exclusively. The boundaries between these three reserves are in no sense tribal boundaries, and the same tribe inhabits all these areas.

1710. The Embu Native Reserve, which is the next on the list, contains several tribes—the Embu, Chuka, Emberre, and Atharaka.

1711. The above enumeration will be sufficient to illustrate the general character of the gazettelement, and we need not pursue the list to the end. But the twenty-first item perhaps deserves special mention, since it shows seventeen separate areas gazetted under the comprehensive title, "Native Reserves in Digo Administrative District other than the Nyika Native Reserve."

1712. The thought will readily suggest itself that, if a serious attempt were to be made to enumerate the native tribes and state exactly what areas had been reserved to the use and benefit of each "for ever", no little confusion and disturbance would be caused. For these reasons, we have concluded that, provided that all the land included in the gazettelement remains native reserve, there is no need to preserve the precise grouping, which does not represent a logical or a convenient, or even an intelligible, arrangement. For reasons already stated in sections 1442-1445 above, we have recommended very much larger units, and we have attempted (in section 1446) a much more practicable description of the degree of exclusive right which a tribe should be held to possess in the land which it occupies. Our object has been to avoid unnecessary restrictions, to remove causes of petty jealousies between tribes, and to permit of more freedom in the flow of population by means of peaceful interpenetration.

1713. We may pause for a moment and consider the position which would have been created in England if, after the land had been consolidated into one kingdom, an ordinance had decreed that each of the seven former kingdoms of the heptarchy was to be set aside for the use and benefit of their respective inhabitants for ever. Would such reservations have been for the benefit of Englishmen as a whole or even of the inhabitants of, say, Wessex or Northumbria, or would it have been to the advantage of the descendants

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of the Mid-Saxons who owned the site of London if a man from Sussex had to be treated as a foreigner as regards the holding of land?

1714. The provisions in the trust concerning the alteration of tribal boundaries are exceedingly rigid. There can be no exclusion of land except for public purposes as enumerated in section 15 of the Ordinance, and then only with the consent of the Board and subject to a provision that an area equal in extent and as far as possible equal in value must be added. Apart from this, there is no provision for exchanges, and even additions can only take place if the Governor considers that the land is "required" for the maintenance and support of the native tribes of the Colony, and if the Legislative Council assents. No lease or licence can be granted without the consent of the Board.

Rigidity of Tribal Boundaries.

1715. The next point is the reservation of the land to the several tribes or tribal units "for ever". As we have already remarked in more than one place, there is no reason to suppose that the present groupings of tribes or even tribalism itself will last for ever.

The Reservation "for ever."

1716. It is quite illusory to suppose that the inclusion of the words "for ever" in an Ordinance gives any legal sacrosanctity against amendment.

1717. We consider that our own proposal that the essential clauses of the Ordinance should be safeguarded by Order in Council provides a less pretentious but far more effective guarantee.

1718. While the tribal aspect of the trust has been carried out with so scrupulous a regard for security and permanence that it precludes the possibility even of agreed exchanges, the private aspect, namely, the security of native groups, families, or individuals in the possession of their lands or "estates" has received such scanty attention that it might almost be said to have been neglected altogether.

The Private Aspect.

1716. In the Bill as originally drafted there was a clause enabling the Governor to make rules defining the rights of groups, families, or individuals, but it was cut out after the Bill had been published for criticism. The explanation given by the Governor in a letter to the Secretary of State in June, 1928, was that he was satisfied that it was better to deal with native customary tenure within the reserves by another Ordinance after a full investigation in each area, which he proposed to institute as soon as the Lands Trust Bill was passed.

The Ordinance as Originally Drafted.

1720. It is therefore clear that the legislation before us, namely, the Lands Trust Ordinance, is not the whole of the legislation which was projected. Of the two principal ends in view, it deals

Incomplete Character of the Present Ordinance.

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comprehensively with only one, which is probably the less important. Doubts might be held of the wisdom of reserving areas of land severally and rigidly to tribes "for ever", when we know that tribes have frequently coalesced or split into sections and tribalism itself is already showing signs of disintegration. But there is nothing ephemeral about the need for guarding private rights, and we are sure that it will become more and more necessary as the natives advance in civilization.

Provision
regarding
Management,
Development,
Administra-
tion and
Control.

1721. After it had been decided to omit native private rights from the Ordinance, one would have supposed that its scope would be confined to the protection of the integrity of tribal land by strict regulation of the conditions under which any part of it could be alienated either permanently by exclusion, or temporarily by lease or licence. The field would then have been left clear for questions of internal management and control of native land to be covered by the companion Ordinance which would deal with native private rights.

1722. In attempting to make provision for internal management, development, administration and control, while excluding consideration of private rights in land, the Ordinance inevitably creates the impression that the whole land is a common. For instance, section 4 declares that all lands in native reserves are under the management and control of the Central Board, and shall be administered for the use and benefit of the native tribes for which they have been respectively reserved, a provision which apparently gives the individual right-holder no voice in the matter. Again, in section 6 it is laid down that the Central Board must consult the Local Board in all matters relating to management and development of land in the native reserve, and since section 7 prevents anything being done except in accordance with the provisions of the Ordinance, it would appear that a *muramati* could not manage his *githaka* nor a right-holder develop his land until the Central Board has consulted the Local Board about it.

1723. In section 8 it is stated:—

"All rents, stand premia, grazing fees or other profits whatsoever accruing from land in a native reserve, or from timber or other forest produce, or from sand, lime, stone, or other materials removed or taken from a native reserve, shall be paid to the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund, or may be paid to any member or members of the tribe concerned who may be considered by the Central Board, after reference to the Local Board concerned, to be entitled thereto."

Here the possibility that there might be private rights appears almost as an afterthought.

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1724. But in the more thickly populated reserves private rights are the whole essence of the matter, and cannot be dismissed with a casual reference, as a detailed examination of the section will show.

1725. The section lays no obligation on the Local Native Council to determine whether the land leased is the property of any group or family or to compensate it in respect of the value of the land. And yet the evidence given to us both in Kikuyu and Kavirondo shows that such a course is clearly desirable. Rents.

1726. If the part of the section which deals with grazing land is read as relating only to the hiring of grazing land by non-natives, it is perhaps unobjectionable. But there is nothing to show that it relates only to such cases, and we have also to consider the practice as obtaining between the natives themselves. While natives do not charge each other grazing fees, they often make arrangements with a poor relation to herd cattle for them, and make a payment in kind. The recipient naturally does not pay it into the Local Native Fund. Grazing Fees.

1727. As regards the provisions relating to all "other profits whatsoever", the custom of pawning land, generally for goats, exists in several districts, and the goats received would presumably come under this head. But nobody pays them to the Local Native Fund. "Other Profits Whatsoever"

1728. To take the case of timber, many natives grow wattle and sell the bark outside the reserve. They put the cash received into their pockets, and do not wait while the Central Board consults the Local Board as to what member or members of the tribe are entitled thereto. Timber.

1729. There are a few natives who dig sand and export it from the reserve, and there have occasionally been instances of natives selling building stone or murrum, which they have dug themselves, for use outside the reserves. So far as is known, no money received on this account has reached the Local Native Council. Sand, Lime, Stone, or other materials.

1730. We do not wish to press our criticism in detail, but the point which we wish to make is this: The Ordinance was originally designed both to protect the integrity of tribal lands as a whole and also to protect the rights enjoyed by groups, families or individuals. The subsequent decision to confine it to the first of these two objects left the clauses relating to the internal management, development, administration and control of land, so to speak, in the air. For although power is taken to manage and develop all land in the native reserves, it is not suggested how it could be operated without subversion of existing customary rights.

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1731. The Ordinance before us, on whose workings we are required under our terms of reference to report, lacks its complementary half which was to deal with these matters. That half has never been drafted. We venture to say that it could not be drafted without a drastic revision of powers already granted under the existing Ordinance to the Lands Trust Board.

Requirements
of Land
Legislation
for the Native
Reserves.

1732. It is immaterial to our purpose whether there should be one Ordinance or several, provided that the essential requirements of land legislation for native reserves are met. Protection must be provided for the tribal lands as a whole, and also for private rights of groups, families and individuals under native law and custom. Nor is this all. It is not enough that the lands should be protected; they must also be developed. As is stated in the letter addressed to the Secretary of State by Sir R. Mant, Sir G. Schuster and Mr. J. H. Oldham, and appended to the Report of the Hilton-Young Commission :—

“ It is not sufficient merely to reserve the land under the dead hand of a rigid and unalienable legal restriction, and it is a necessary consequence of these considerations that a measure which aims at preserving the beneficial use of the land to the natives must include regulations for handling it.”

General
Criticism of
the Ordinance.

1733. The essential requirements being (a) protection of tribal lands, (b) protection of native private rights, and (c) development, it has to be confessed, if we are to judge of the Ordinance from the way in which it meets them, that, for a reason already given, it does not meet the second requirement at all, and that the failure to do so has prevented the provisions regarding internal management, control, and development being other than vague and nebulous. The point upon which the Ordinance has really concentrated is the first requirement—the protection of tribal lands. But even there we are unable to discern the principles upon which the particular units of native reserve have been determined or the precise meaning of the statement that they have been respectively reserved to the various tribes. In face of the rapid changes which are taking place, we consider as almost a contradiction in terms a provision which attempts to reserve specific lands to specific tribes “for ever”, and we find that it is a serious defect in the Ordinance that no machinery should have been provided for rectification of frontiers, or for agreed exchanges.

Criticism of
the Ordinance
in detail.

1734. We now turn to criticism in detail, and shall pass rapidly through the Ordinance clause by clause. At the conclusion of this process we shall offer our own proposals for reconstruction.

Section 1.

Section 1 gives the short title. We have no comment.

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Section 2 deals with the reservation of land for natives. In Section 2. the first sentence it is stated that the areas of Crown land described in Government Notice No. 394 are native reserves set aside for the use and benefit of the native tribes of the Colony for ever. We have already commented on the units selected, and have recommended wider units (*see* sections 1442-1446 above), and have recommended that the land cease to be Crown land (section 1649).

1735. In connexion with the phrase "use and benefit", reference may be made to section 1446, in which we discuss the rights of occupant tribes and the extent to which there should be a right of excluding members of other tribes.

1736. We have commented on the phrase "for ever" in sections 1715-1717, and also on the absence of adequate provision for rectification of frontiers (section 1733).

1737. The demarcation of the boundaries on site in accordance with the gazetted description has revealed many small discrepancies with the boundaries as till then observed. In several of these cases, the position could have been set right to the satisfaction of all parties by means of small exchanges, if a machinery had been provided.

1738. In the second part of the section it is stated that the Governor, with the approval of the Legislative Council, may "reserve for the use and benefit of the native tribes of the Colony such further areas of Crown land as in his opinion may be required for their maintenance and support".

1739. Several additions have been recommended by the Executive Council, but have not been brought before the Legislative Council, because of the uncertainty regarding the meaning to be attached to the word "required". If it is to be interpreted to mean "necessary" in the sense that the native tribes of the Colony could not otherwise be supported and maintained, it becomes impossible to make any additions to meet some useful, but not absolutely essential, purpose.

1740. In the second sentence of section 2 (2), it is stated that any areas so reserved shall be deemed for the purposes of the Ordinance to be native reserve. It would follow that it would become reserved "for ever".

1741. Our own proposals are far less rigid. They would admit of exchanges, additions, and, in certain circumstances, exclusions. Additions now recommended to be made under Classes A and B1 would, it is contemplated, be made by the Governor with the advice and consent of the Legislative Council; additions now recommended to be made under Class B2 would be by lease at a low

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rental, perhaps a peppercorn (sections 1456, 1457). Subsequent additions would normally be by lease at an economic rental, but it would also be possible for the Governor, with the approval of the Legislative Council, to add land as Class A or B1 without lease, provided that additions in Class A should only be for the purpose of exchanges or petty adjustments (section 1473). The question of land given up by a native reserve in exchange for land added is covered in sections 1474 and 1475. The possibility of exclusion of land under Class B1, if it should no longer be needed, is contemplated in section 1459, in which adequate safeguards are provided.

Section 3.

1742. Section 3 deals with the constitution of the Central Board. Our criticisms have been made comprehensively in the last chapter (section 1693).

At the end of this section is a provision that no lease or licence shall be granted and no land shall be excluded from a native reserve for public purposes unless there shall be a meeting of the Lands Trust Board and at least five votes shall be recorded in favour of such lease, licence or exclusion. It has been pointed out that some licences are for very trivial purposes and that the Lands Trust Board ought not to be troubled with them at all. A case in point was an application to move one cart-load of lime from a native reserve for testing purposes. We shall comment further on these matters under the relevant sections below.

Section 4.

1743. Section 4 provides that all lands in native reserves and all matters relating to such lands should be under the management and control of the Lands Trust Board.

We are in complete disagreement with this section, both on the ground that it appears to overlook the existence of native private rights (*see* our comments in sections 1724-1731 above), and also because the control, administration and development of the native reserves is a fundamental duty of Government, which it ought not to delegate.

1744. The existence of the trust implies that the Lands Trust Board should have a protective power, and we have endeavoured to provide for this by numerous safeguards (set out fully in Chapter III of this Part). We have also proposed a general safeguard that, if the Board considers that the native reserves are not being devoted to the use and benefit of the natives or that the land is not being conserved and properly developed, it should have the power and duty of making representations to the Governor, or to the Secretary of State. But, subject to these safeguards, the management and control should remain with Government.

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1745. Section 5 deals with the constitution of district advisory boards, called Local Boards. The working of the Local Boards calls for little criticism. They have fulfilled a useful function, and it is generally agreed that the European member has contributed usefully to the debates. Nevertheless, in the reconstruction of the Ordinance which we shall presently recommend, we shall propose that the principal function of the Local Board will be to advise the Provincial Commissioner, and also to record for the information of Government the extent of its agreement or disagreement with any proposal put before it by the Provincial Commissioner. The end in view is to obtain responsible native opinion, and the Provincial Commissioner will have at his command other sources of obtaining non-native opinion. We shall therefore recommend a purely native Local Board, with the exception of the District Commissioner, who would be chairman. Section 5.

1746. A point which cannot be neglected in these difficult times is the unnecessary expense entailed in meetings of the Local Board. The members are five: the Provincial Commissioner (chairman), the District Commissioner (vice-chairman), the Chief Native Commissioner (*ex officio*), one European unofficial, and one African. It is provided that "the chairman or deputy chairman and three other members shall form a quorum". Since there are only three other members besides the chairman and deputy chairman, it follows that they must all be present, and that no meeting of a Local Board can be held unless the Chief Native Commissioner attends. This curious provision has been ignored in practice or circumvented by the doubtful expedient of co-option, and many meetings of Local Boards have been held without his presence. But, even then, the Provincial Commissioner would have to be present, and that in itself entails much travelling, especially under the new arrangement of fewer and larger provinces. According to our proposal, the Local Boards will be advisory to the Provincial Commissioner, and it is better that he should receive their reports in writing rather than be a member of the Board himself.

1747. Section 6 provides that the Lands Trust Board shall consult the Local Board on certain matters specified. In practice, these matters do not reach the Lands Trust Board at all until the Local Board has reported on them. This practice is far more convenient than the procedure laid down in the Ordinance. Section 6.

1748. The matters regarding which such consultation is declared to be necessary are: (a) The granting of leases or licences under section 8; (b) Exclusions for public purposes under section 15 and other powers exercised by the Governor under sections 16 and 18; (c) All matters relating to the management and development of land in a native reserve.

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1749. Regarding (a) and (b), we defer our comments until we come to the sections concerned. Regarding (c), we dissent comprehensively and profoundly.

1750. The clause implies a static condition in which the initiation of development lies with the Lands Trust Board, which asks the advice of the Local Board, and finally authorizes somebody to do something so that the reserve may be developed. We prefer to think of a dynamic condition in which natives are themselves the principal developing agents by cultivating their own crops on their own land and pursuing their lawful occupations, the Lands Trust Board being only concerned in a protective capacity. Advice or regulation required for helping the natives to develop their own land should be the active concern of Government. We agree, however, that the Lands Trust Board should make representations, if it considers that Government is neglecting its duty in this respect.

1751. In so far as it may be contended that the clause has not the meaning assigned to it, but is intended to apply only to applications for leases or licences or the like, we remark that it is at once redundant to (a) and misleading.

Section 7.

1752. Section 7 is entitled "Disposal of land in Native Reserves", and provides that no land may be "leased or otherwise disposed of" except in accordance with the terms of the Ordinance. The methods provided in the Ordinance are lease, licence, and, in certain cases, exclusion.

1753. In practice, it has frequently been found convenient to deal with land required for purposes of social service or for trade by a different method, called "setting apart", and described in rules under the Ordinance. These rules are made under section 22, which admits of rules being made "for the purpose of carrying this Ordinance into effect". But we confess to a doubt whether rules which seem to involve a departure from the Ordinance can properly be called an implementing of it.

1754. However, we fully agree that there ought to be a method of setting apart, and have recommended (section 1539) that it be given a wider application than is contemplated in the rules. But we consider that the provisions should be embodied in the Ordinance itself.

1755. In the second clause of the section it is stated that no lease or licence shall be granted until the Lands Trust Board has consulted the Local Board and is satisfied that the proposal has been brought to the notice of the local natives concerned and of the Local Native Council. It is further provided that if the African

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member of the Local Board or the Local Native Council objects, the lease or licence shall not be issued without the sanction of the Secretary of State.

1756. These provisions appear to us to entail an excess of reference to authority. Taking first the case of leases, we consider that our recommendations at sections 1526, 1541 and 1631 give all the safeguards which are necessary, entailing as they do (a) an original setting apart, duly safeguarded; (b) discretion to the Provincial Commissioner, after consultation with the Local Land Board, to grant a lease of a plot up to ten acres in an area so set apart; (c) discretion to the Chief Native Commissioner to assent, on behalf of the Lands Trust Board, to the leasing of land up to fifty acres in an area so set apart; (d) direct reference to the Lands Trust Board and a power of veto by the Board in cases where the land to be leased exceeds fifty acres. In our opinion, that gives all the safeguards which are necessary, provided that, as we shall recommend, the Local Board is reconstituted to consist almost entirely of natives, and the Lands Trust Board is a body completely independent of Government.

1757. Our second criticism of the provisions regarding leases is that they sometimes involve unnecessary delay. For instance, when once a piece of land has been set apart for a trading centre, and the Local Board, the Local Native Council, and the local natives have all been consulted, and the Lands Trust Board has agreed, it is a wearisome procedure to have to repeat the whole process of consultation over again each time that an individual plot in the trading centre has to be leased.

1758. We have already commented (section 1534 above) on the provision in section 7 (b), that there may be no lease unless there is reason to believe that the natives of the tribe will derive benefit apart from revenue. We regard this as unnecessary, but agree that the lease should not be granted unless there is reason to believe that it will be of benefit to the natives when all the circumstances, including the rent, have been taken into account.

1759. We have also commented (section 1535) on the provision contained in section 7 (c), which forbids lease if the land is being beneficially occupied, or is likely to be required for the use and support of the natives of the tribe during the currency of the lease. Bearing in mind that plots for public purposes or for purposes of social service, such as schools and churches, are most likely to be required where the population is thickest, we cannot subscribe to this provision, but we agree that there must be full compensation. Even when the purpose is for an industrial lease, we cannot entirely agree that occupation, however sparse, should preclude the issue of

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the lease, however important the object may be and however beneficial to the natives it may be. We consider that, subject to consent of the Lands Trust Board and the agreement of the Governor, it should be possible to grant leases in such cases, provided that the compensation paid is full and generous and that every reasonable precaution is observed.

Section 8.

1760. Section 8 deals with "Alienation or other disposal of land in Native Reserves".

1761. Section 8 (1) (a) provides that the Governor may issue leases with the advice and consent of the Lands Trust Board, but that the Lands Trust Board should fix the rent. We have recommended (section 1531) that the Provincial Commissioner should decide the matter after consulting the Local Board, but that there be an appeal to the Governor, and that the Lands Trust Board should have a power of veto in the case of all leases of land in excess of ten acres. The present provision involves too much reference of petty matters to the Lands Trust Board.

1762. Section 8 (1) (b) deals with the issue of licences to "persons not being members of the tribe" in respect of (1) the grazing of cattle; (2) the removal of timber or other forest produce; and (3) the taking of sand, lime, stone, etc. It provides that the Governor may issue them with the advice and consent of the Lands Trust Board. But it is provided in section 3 that no such licences may be issued unless at least five members of the Lands Trust Board are in favour of them, while section 7 requires that there must be a reference to the Secretary of State, if the Local Native Council or the African member of the Local Land Board objects.

1763. We consider the whole process to be far too cumbersome. We have already made our criticisms (sections 1623-1629), and have endeavoured to make recommendations which will provide an adequate safeguard for native interests, while allowing a much wider discretion to the local authorities. Constant reference of petty matters to the Lands Trust Board has the triple disadvantage that it distracts the attention of the Board from more serious duties, holds up legitimate development, and introduces a creeping paralysis into the power and ultimately the will of the Government to govern.

1764. Section 8 (1) of the Ordinance contains a special clause relating to the Masai tribe. For reasons already stated in section 671, we think that the considerations governing the question of leases or licences in the Masai Native Reserve should be the same as they are in any other native reserve, and we see no need for the retention of the special clauses.

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1765. Section 8 (2) relates to leases for special purposes. We have no comments other than those which we have already made on leases generally.

1766. Section 8 (3) deals with the destination of all rents, stand premia, grazing fees and "other profits whatsoever". We have already given our opinion that it takes insufficient account of the existence of private rights. We have also pointed out (section 1620) the difficulty caused by the requirement that all profits from the sale of forest produce in a native reserve forest reserve have to be paid to the Local Native Council.

1767. Section 8 (4) provides that a yearly return of all leases and licences should be forwarded to the Lands Trust Board. We do not consider this to be necessary, and have given our reasons in sections 1624-1629 above.

1768. Section 9 deals with the forms of leases and conditions implied in leases. We only wish to comment on one point. Section 9.

1769. In section 9 (2) (b), it is provided that the lessee shall bind himself to pay such compensation for damage or disturbance as the Lands Trust Board may assess. According to our recommendations there would be no such obligation. The Local Native Council would arrange to compensate the right-holders when the plot is set aside, and the lessee would get a straight lease (section 1528). Any other arrangement would be cumbersome, because right-holders frequently prefer annual rather than outright compensation, and, if the lessee were to pay it, he would have the appearance of paying two rents—one to the right-holder and one to the Local Native Council. And, if there should be more than one right-holder, the complication would be worse. Another point is that, in our recommendation, the Provincial Commissioner assesses the compensation subject to safeguards enumerated in sections 1526 and 1541, which include a power of veto by the Lands Trust Board if the land to be set apart exceeds ten acres.

1770. Section 10 provides that the rent charged in all leases must be fixed "at the highest amount that can reasonably be expected to be obtained from the land, having regard, etc. . . ." Section 10.

1771. We have already stated in section 1533 above that we regard this provision as unduly rigid, and that more latitude should be allowed.

1772. It is worth remarking that the Governor of Kenya, in introducing the Bill in the Legislative Council, stated of the leasehold clauses :—

"The first object of these clauses has nothing to do with alienation from the tribe concerned. It is to provide that individual leasehold tenure may be introduced for the benefit of

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members of the tribe to which the reserve as a whole is secured."

It seems somewhat strange, if such was the primary object of these clauses, that the Ordinance should have gone out of its way to demand a maximum rent.

Section 11.

1773. Section 11 provides that lessees may not alienate land by sub-lease or otherwise without the consent of the Lands Trust Board. We have no comment on the fairness of this proposal, but pursuing our general design of relieving the Lands Trust Board of non-essential duties, we recommend that reference to it should not be necessary if the land to be sub-leased or otherwise alienated is less than fifty acres in extent, unless there is to be a change of user; but that the Provincial Commissioner should deal with such matters after consulting the Local Land Board, and subject to an appeal to the Governor. Even if there is to be a change of user, we do not think it necessary that reference should be made to the Lands Trust Board if the land affected by the change of user is less than ten acres in extent.

Sections 12,
13, and 14.

1774. Sections 12 and 13 provide for forfeiture of lease or licence for non-payment of rent or breach of covenant. Section 14 provides that such forfeiture does not extinguish the debt. We have no comments.

Section 15.

1775. Section 15 (1) gives power to the Governor to exclude land from a native reserve for certain public purposes, but only subject to the advice and consent of the Lands Trust Board. While we have given reasons for thinking that exclusion is generally not the best way of securing land for public purposes, and that setting apart is better, we have recommended that exclusion should remain a possibility (section 1517). But in case it should happen that the Lands Trust Board refuses its consent, and that no satisfactory arrangement can be made either by the process of setting apart or exclusion, we have recommended that it should be possible, with the consent of the Secretary of State, for land to be acquired under the Land Acquisition Act or similar provisions (section 1521), and we have advised that in our opinion such a provision would not be unfair to natives, as all land in the country is subject to similar provisions.

1776. There has been much criticism on the score of impracticability of the clause that, when any land is excised, an area equal in extent and as far as possible equal in value must be added. We agree that the provision would be impracticable in many cases, but consider that it should be allowed to stand, subject to the modification that, in the last resort, if no satisfactory arrangement

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can be reached either by this process or by setting apart, the provisions of the Land Acquisition Act can be applied, in which case compensation need not necessarily be in land.

1777. While section 15 only provides for excision for public purposes, we consider that there should also be provision for excisions to balance additions in voluntary exchanges, but we consider equivalence to be a more important consideration than exact equality of area in such cases.

1778. If our views in regard to the constitution of the Lands Trust Board are accepted, we consider that the provision made at the end of section 15 (1) should be omitted, since the safeguard of reference to the Secretary of State in cases where 200 acres or more are involved, should no longer be required (*see* section 1519 above).

1779. We consider that the proviso to section 15 (2) should be omitted, because we cannot conceive that it should ever be necessary to exclude roads or railways or the sites of single buildings from the native reserve, and we have made proposals dealing with them by means of setting apart. For our proposals, *see* sections 1607-1617.

1780. Section 16 provides that the Governor may (a) take stone or other materials from any land in a native reserve for repairing roads or for other public works upon payment of compensation for loss or disturbance; (b) conduct electric lines, water pipes, sewers, etc., without paying compensation, but making good all damages; (c) do any work in connexion with specified classes of waterworks upon compensation for loss or disturbance; (d) grant written authority to Government officers and contractors and their servants or agents to do these things. Section 16.

1781. The clause seems satisfactory enough until one discovers—a fact of which the section itself gives no hint—that it is governed by section 6, which provides that the Lands Trust Board must consult the Local Board about “matters relating to and arising out of the exercise of the powers of the Governor” under this section.

1782. Thus it happens that, if a District Commissioner, having the Governor's permission in writing, authorizes a contractor to build in the reserve a native tribunal court, for which the Local Native Council has voted funds, and for that purpose to take stone from the neighbourhood; or if he instructs the station hands to dig murrum, sand or clay for the repair of the police lines, or if he even fills in a hole in a road in the reserve and moves any material from any land—these are matters upon which the Lands Trust Board must consult the Local Board.

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1783. We consider that the actions of the Governor or his authorized agents under this section should not be liable to be called in question by the Lands Trust Board or by the Local Board except in so far as the Provincial Commissioner may refer to the Local Board any question of compensation which may arise.

Section 17. 1784. Section 17 provides that nothing may be done by the Governor or be allowed by him to be done under sections 15 and 16 which would have the effect of depriving the natives concerned of any water without the prior consent of the Lands Trust Board. Our comments have already been made in sections 1595-1606 above.

Section 18. 1785. Section 18 provides that no forest area in a native reserve may be declared without the consent of the Lands Trust Board, and that no rules may be made concerning such forest area, when declared, without consent of the Board. We have recorded our general agreement with the first part of this proviso, and our disagreement with the second part, in section 1618 above.

Section 19. 1786. Section 19 provides that the Chief Native Commissioner is the responsible officer for representing the Crown or the Governor in all actions instituted under the Ordinance. We have no comments.

Section 20. 1787. Section 20 deals with the power of officials to enter upon lands in the execution of their duty. We have no comments.

Section 21. 1788. Section 21 prescribes the penalty for unlawful occupation of land in a native reserve. We consider that, in order to avoid the necessity of reference to other Ordinances, the position should be made clear as to what constitutes unlawful occupation. In this connexion, we invite attention to sections 1667 and 1668 above.

Sections 22, 23, and 24. 1789. Section 22 provides a power to make rules; section 23 saves existing rights held upon title; and section 24 repeals Part VI of the Crown Lands Ordinance. We have no comments on these sections.

The Reconstruction of the Ordinance. 1790. We find a general consensus of opinion among the witnesses whom we have consulted that the amendments required in the Ordinance are so numerous that nothing but a complete reconstruction will suffice. The foregoing analysis bears out this view.

1791. There is no need for us to examine the details of reconstruction. We have already made proposals in considerable detail, and little remains but to recommend that they be implemented. This would entail not only embodiment in an amended Lands Trust Ordinance, but also the protection of essential clauses by Order in Council. In the final chapter of our Report we shall offer suggestions as to the particular matters for which the protection of the Order in Council should be sought, but we shall content ourselves

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in this place with reiterating the salient features of our recommendations.

1792. The land reserved for tribal tenure should be :—

Class A Reserves, to be known as Native Lands.

Class B1 Reserves.

Class B2 Reserves.

(1) The Land to be reserved for Tribal Tenure.

These categories have been defined in section 1433. The particular areas included in each category are described in the schedules following section 1510, and are shown in the coloured map following section 2152.

1793. We recommend that Class A be native land, and not Crown land, and that the boundaries of the nine main units which we have recommended be defined and protected by Order in Council.

(2) Status of the Land so reserved.

1794. Class B1 should be called Native Reserve, but remain Crown land. It should be under the protection of the Lands Trust Board. It should not be diminished or taken away without the consent of the Board, excepting only that an appeal should lie to the Secretary of State, who should be able, if he considers that sufficient cause exists, to override the veto of the Board. Class B2 should be held on lease. In respect of areas now recommended to be Class B2, we advise a very low rental, perhaps a peppercorn, but strict conditions of conservation and use. In respect of further areas which may possibly be required as B2 in the future we recommend an economic rental. The protection of the Lands Trust Board should be extended to Class B2 in the same way as B1, and should be subject to the same appeal to the Secretary of State.

1795. Adjustments of tribal subdivisions occurring within the boundaries of the main units should be matters for decision by the Governor; and it is not advisable that the protection of the Order in Council or of the Lands Trust Board should be extended to them. This would, of course, not affect private rights in land:

(3) Security for Tribal Sub-Units.

1796. Grouping of tribes within a single unit of native lands should be held to imply that the system or systems of land tenure obtaining among them are the same or similar, and can be developed along similar lines, subject to such local variations as are found to be required. Neither the units themselves nor the separate groups within the units must be held to constitute an impenetrable barrier against immigration of members of other tribes or groups, but we recommend that the following provision should be inserted in the Ordinance to define and safeguard private rights, whether of tribes, groups, families or individuals :—

(4) Rights of Occupant Tribes and Private Rights.

“ In respect of the occupation, use, management, control, inheritance, succession and disposal of any land situated in

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Native Reserve Class A (or "Native Lands"), every native shall have all the rights and powers which he has under native law and custom (as it may be or become from time to time, either by natural evolution or by modification by rule made under this or any other Ordinance), both in regard to individual rights and in regard to tribal, group, or family rights, in so far as such rights and powers are not repugnant to the Lands Trust Ordinance or any rule made or to be made under it, or to any other law or Ordinance of the Colony."

We recommend, however, the insertion of a clause that native land may be escheated in the event of treason or rebellion, and that such escheatment may apply, according to circumstances, either to tribal land or land held by groups, families or individual right-holders.

(5) Additions.

1797. Our recommendations regarding the extent to which additions should be allowable, and the method for making them, have been clearly set out in sections 1473 and 1741. Additions, which should normally be by lease, would only be possible on economic grounds or to balance excisions under section 15 of the Ordinance, or as a result of voluntary exchanges, but the additions now recommended by us to be made under Class A should be a full satisfaction of all claims of right, and no further extensions on those grounds should be entertained.

(6) Exclusions as under Section 15 of the present Ordinance.

1798. We have agreed that the method of exclusion and compensatory addition, as described in section 15 of the Ordinance, should remain as a way, but not as the only way, of acquiring land for public purposes. We have proposed certain amendments of details (*see* sections 1607-1617; also 1778 and 1779).

(7) Setting Apart.

1799. Our proposals in regard to setting apart have been comprehensively stated (sections 1523-1541), and it would be wearisome to repeat them here. In respect of reference to the Lands Trust Board, we have recommended that the Board should have a power of veto when the land to be set apart exceeds 10 acres; but that it should be able to delegate to the Chief Native Commissioner the power of assenting on its behalf to the setting apart of land up to one hundred acres.

(8) Leases.

1800. We have recommended that land must be set apart before it is leased. When the land has been set apart, the Provincial Commissioner may, after consulting the Local Land Board, divide the area into plots, where necessary, and let them in conformity with the purposes for which the land was set apart. The Lands Trust Board has a power of veto against any lease in excess of ten acres, but may delegate to the Chief Native Commissioner the power of assenting on his behalf to the leases of any land up to fifty acres. (sections 1531 and 1631).

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1801. Our recommendations with regard to licences generally have been given in section 1628 above; the responsible authority would be the Administration, which would be guided by any general or special instruction which the Lands Trust Board might issue for the protection of native interests: the Chief Native Commissioner might, at his discretion, defer the issue of a licence pending reference to the Board. (9) Licences.

1802. We have recommended that an objection by the Board against a licence already issued should be valid to prevent renewal, except that it may be necessary to provide for appeal to the Secretary of State against the veto of the Lands Trust Board in matters vitally affecting essential supplies (section 1628 and note).

1803. Our recommendations in regard to the special cases of prospecting licences, special alluvial permits, etc., are given in sections 1582-1594, and in regard to water permits in sections 1599-1606.

1804. We recommend: (a) that the Provincial Commissioner should be able to do and to authorize others to do all the things specified in section 16 of the Ordinance in respect of taking stone or other material required for public works, conducting electric lines, water-pipe lines, etc., undertaking works for the conservation of water or improving the flow of any river and works of a like nature, provided that he should observe the requirements of the Water Ordinance and any other relevant Ordinance; (b) that he should be able to delegate his powers to District Commissioners in respect of this section; (c) that he should assess any compensation due, after consultation with the Local Board; (d) that in the event of a disagreement between the Provincial Commissioner and the Local Board regarding the amount of compensation due, the Chief Native Commissioner should decide; (e) that the Lands Trust Board should not be concerned, except that it should have the right to be supplied with any information for which it may ask, and to make representations to the Governor and to the Secretary of State. (9) Authorization to Agents of Government.

1805. We recommend that the provisions of section 8 (3) regarding the destination to the Local Native Council of all rents, stand premia, etc., should remain, in so far as their general intention is concerned, but that they be amended in detail so as to obviate the difficulties to which we have invited attention. (11) Destination of Rents, etc.

1806. We have also recommended (section 1546) the introduction of provisions which would compel disbursements or recoveries to be made from rents for the fulfilment of certain obligations.

1807. We have recommended (section 1667) that the position in regard to trespass and unlawful occupation should be made clear. (12) Trespass and Unlawful Occupation.

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(13) Rules.

1808. While we have no comment on the general provision in section 22 of the Ordinance that the Governor, with the advice and consent of the Lands Trust Board, may make rules for the purpose of carrying the Ordinance into effect, we have recommended a somewhat different procedure in regard to rules made for the regulation of matters affecting land tenure as between native and native in the reserve. There we have recommended that, after full discussion and debate, the method of which for the sake of security should be laid down in the Ordinance, the Governor should have the power to make the rules, subject to notification to the Lands Trust Board and a power of disallowance by the Secretary of State.

1809. The reason for the distinction is that the regulation of a system of land tenure by a development of native custom calls for close study and expert knowledge, and we consider that the advice and consent of the Lands Trust Board in such a matter would be a less sure guide to right action than the advice and consent of the various other bodies for whose consultation we have provided.

**(14) Position
of the
Provincial
Commissioners
and Powers of
Officers.**

1810. We have recommended that the Provincial Commissioner should be the officer directly responsible for the operation of the Ordinance in his province.

**(15) Rights of
the Crown.**

1811. In view of our recommendation that Class A land should be native land, it is probable that section 20 of the Ordinance, dealing with the rights of officers to enter upon any land in the performance of their duties, will have to be amplified and extended. The power of the Government to carry out its duties must be completely safeguarded.

**(16) Duties of
the Lands
Trust Board.**

1812. The duties of the Lands Trust Board should consist of the exercise of a protective control in accordance with the terms of the trust, as safeguarded and defined by Order in Council, and in conformity with the Ordinance.

**(17) Duties
and Personnel
of the Local
Boards.**

1813. The duties of the Local Board should be: (1) To advise the Provincial Commissioner in matters relating to land both in respect of the protective need and to some extent the constructive need; (2) To act as a check on the Provincial Commissioner by means of objections, which would entail reference to higher authority. We recommend that the members should consist of (a) the District Commissioner, (b) two of the nominated members of the Local Native Council to be chosen by the Provincial Commissioner, (c) two of the elected members of the Local Native Council, one to be chosen by the Provincial Commissioner and one to be elected by the Local Native Council.

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1814. It is a matter for consideration whether the provisions for Native Lands, Class C should be under the Crown Lands Ordinance or the Lands Trust Ordinance. We have recommended, in section 1469, that their external boundaries should be protected by Order in Council, but should be capable of modification by means of exchanges, subject to the consent of the Lands Trust Board in each case.

(18) Native Lands, Class C.

1815. We have now summarized what we consider to be the leading requirements for an equitable and workable Lands Trust Ordinance. We should wish our proposals to be judged by the answers which they provide to the following questions:—

The proposals as compared with the existing Ordinance

(1) Do they give the natives more security than the existing Ordinance?

(2) Do they afford a better method for management, development and control?

1816. To ensure security, we have recommended that an Order in Council be sought to ensure the proposed Ordinance against amendment of essential clauses without the authorization of a subsequent Order in Council. This gives far better security than an Ordinance which purports to reserve the native lands "for the use and benefit of the native tribes of the Colony for ever", but which is itself not safeguarded against amendment.

(1) The Question of Security.

We consider that when this has been done it will no longer be necessary to provide that the Ordinance should be an overriding Ordinance. If the essential clauses are safeguarded by an Order in Council, there is no reason why the subsidiary clauses should not be as freely amended as those in any other Ordinance, and if they happen to conflict with the provisions of some other Ordinance, there is no reason why they should always prevail.

1817. We have proposed that all the land which is now native reserve and all the additional land which we consider that the natives can claim "as of right" on historical grounds, should cease to be Crown land and should be native land under the protection of the Lands Trust Board on terms secured by Order in Council. We have also recommended that lands required for economic needs which seem likely to be permanent should be added to the native reserves under protection of the Lands Trust Board, but should remain Crown land. Such lands could not be taken away or diminished without the consent of the Lands Trust Board, except that there would be an appeal to the Secretary of State, who would be able, if he considers that sufficient cause exists, to override the veto of the Board. There are also cases of economic needs which seem less likely to be permanent, and in these cases we have recommended lease on a low rental, perhaps a peppercorn, but with

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strict conditions of conservation and use. To meet further tribal needs which may arise in future, we have recommended lease as the normal method, but have provided means by which, if necessary, exchanges or petty adjustments could be made on a more permanent basis (sections 1473-1475).

1818. These arrangements give far more security to natives against shortage of land than the provisions of the present Ordinance. The proviso of the present Ordinance that land, once added, is added for ever must inevitably invite strong opposition to every extension, and none can be made without the approval of the Legislative Council.

1819. A second point is that it has been argued, under the existing Ordinance, that no land can be added to a reserve, unless the tribe concerned could not otherwise be maintained and supported. Whether or not this is the real meaning of section 2 (2) of the Ordinance, no addition has in fact been made to any native reserve since the Ordinance was passed. Several additions have been approved by Executive Council, but have not been placed before Legislative Council on account of this difficulty. Our proposals contain no such disability.

1820. As a practical step to preserve the integrity of tribal territory and to foster the growth of a tribal pride in its development, we have proposed that land required for townships or other public purposes, instead of being excluded as the present Ordinance provides, should remain in the reserve concerned, and be developed as part of it.

1821. We consider it a just criticism of the original Ordinance that it is too much obsessed with the idea of land as a sort of common reserved for a tribe. Our proposals throughout will be found to give far more prominence to private right-holding, and they are based on a frank recognition of the fact that the tenure of land is progressively becoming more individual, and that the problem of land for natives certainly cannot be met simply by the expedient of reserving areas to specific "tribes of the Colony for ever".

1822. In all these ways we claim to have come to closer grips with the practical problem of providing land for natives and developing it for their use and benefit. We believe that our proposals, taken as a whole, offer them far more security in these respects than does the present Lands Trust Ordinance.

1823. Our recommendations in respect of "C" and "D" areas, of which more details will be given below, are outside the scope of the present chapter, but must be taken into account when the

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facilities which natives would enjoy under the terms of our Report are compared with those which they now have under the Lands Trust Ordinance.

1824. The statement is not open to serious challenge that the provisions of the existing Ordinance, in which all management, development, administration and control of native land is placed in the hands of the Central Board, are utterly unworkable, and have been generally ignored. The Provincial Administration has, very properly, continued to regard itself as responsible for the tutelage of the natives in respect of the development of their reserves. We believe that our proposals, if implemented, will strengthen the hand of Government and enable it to face with more confidence the urgent task with which it is confronted, both in developing resources and also in conserving the soil against deterioration.

(2) The
Question of
Development.

1825. Our whole endeavour has been to provide for an Ordinance which will work, instead of one which, in the opinion of most administrative officers, is so lost in the tangle of its own checks and counterchecks as to constitute a serious hindrance to progress in the reserves. If the Land Board is required to deal with all sorts of petty details, we cannot expect men of distinction to consent to serve on it. We consider that we shall have the support of all races and sections in Kenya in recommending the creation of a strong independent Board to deal with essential safeguards, and the liberation of Government from the irksome petty restrictions which, under the existing Ordinance, have to a large extent paralysed its power of action.

CHAPTER VII.

EXISTING NATIVE RIGHTS OR CLAIMS OUTSIDE NATIVE RESERVES.

**Existing
Claims of
Right.**

1826. Before proceeding to the consideration of what facilities ought to be given to natives in respect of the use and occupation of land outside the reserves, we shall devote a chapter to the consideration of the steps to be taken in regard to rights which already exist or are claimed.

**The Basis of
the Claims.**

1827. With insignificant exceptions, there is no land in the Colony (as apart from the Protectorate) which has been issued to natives on any form of private title more durable than a temporary occupation licence. No difficulties arise in this connexion which need be considered here. The difficulty is of another kind, and arises from the fact that certain rights are claimed as either pre-existing the Government land legislation and independently valid, or as being specially saved under that legislation. These claims have both a tribal and a private aspect.

Tribal Claims.

1828. In the tribal aspect they are claims that the tribe in question was formerly in occupation of territory of which it has been deprived. We have conducted an exhaustive inquiry into these claims, and the results of our investigations have been stated in the first two parts of our Report. The arrangements which we have proposed for the settlement of this question should be held to constitute a full quittance of all tribal claims of right external to the boundaries of the tribal territory as they will become as a result of the additions recommended.

**Private
Claims.**

1829. The question arises whether these settlements with the tribes should be held to carry with them automatically a settlement with all the individual members of the tribes. For instance, if a piece of tribal territory has been lost and a compensating area has been added, are we to hold that the individuals who occupied the area lost are sufficiently compensated and can justly be required to accommodate themselves in the reserve or in the added area? The question arises as a clear issue in respect of section 86 (1) of the Crown Lands Ordinance, 1915, in which it is provided that :—

“ The Governor may grant leases of areas of land containing native villages or settlements without specially excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.”

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1830. The same provision, in almost identical terms, is contained in section 31 (1) of the Crown Lands Ordinance, 1902. It is therefore very pertinent to ask whether, an equitable settlement having been reached with the tribes regarding their territory as a whole, these particular rights may now be extinguished.

1831. It is not only in respect of the leasehold lands that this question arises, for it is provided in section 30 of the Crown Lands Ordinance, 1902. that :—

“ The Commissioner shall not sell or lease any land in the actual occupation of natives.”

As we have had occasion to point out in more than one instance, this clause has sometimes been disregarded in the disposal of freehold. In our opinion, the private claims of any natives affected by such action are in equity quite as worthy of consideration as the claims which are protected under the leasehold clauses. The whole issue must be considered as one, and may be stated thus :—

“ An equitable settlement having been reached with the tribes, is it desirable or is it fair that all native private rights existing outside the reserves should now be extinguished? ”

1832. With certain reservations and exceptions which will have to be explained later, it is manifestly undesirable that native rights outside the reserves should continue on their present basis. The records to which we have had access show that the Law Officers of the Crown have differed as to the meaning of “native villages or settlements” or “actual occupation of natives”, and the legal evidence which we have taken upon the point would appear to indicate that a state of uncertainty exists which must be extremely prejudicial to that security of land-holding and development which it must be one of the first duties of any Government to create. It is abundantly clear that these natives rights must either be defined, or be compensated and extinguished. The first alternative is open to the objection that it would create a large number of native settlements scattered about at a distance from each other and from the reserves, and we believe that all responsible opinion in the Colony, both native and non-native, would be united in preferring a solution on the lines of consolidation: that is to say, an extension of the reserves in return for a surrender of rights outside them.

The desirability of extinguishing Native Rights in Land outside the Reserves except such Rights as are held upon Title.

1833. Such consolidation we have endeavoured to bring about by our proposals for various extensions of the native reserve boundaries. The question is whether, in consideration of them, native rights outside the reserves should now be extinguished without more ado, or whether some special compensation for disturbance must be paid over and above the block additions of land to the tribe concerned.

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**The Fairness
of the
Proposal.**

1834. The fairness of the proposal to extinguish depends upon the adequacy of the compensation in each case, and it will be right to review the matter as it affects each tribe.

The Kikuyu.

1835. In the case of the Kikuyu we found that some of the natives who were on the farms when they were alienated took compensation and left; others left subsequently without compensation; and yet others still remain. We decided first that a full settlement should be made with the tribe by the addition of land equivalent to the net loss, but that over and above this, a further addition of territory should be made as a sort of general compensation for disturbance, but that it would not be practicable or desirable to seek for the actual persons disturbed and compensate them severally, excepting only those who still remain on the farms. In their case, we recommended the payment of a sum of £2,000 to be distributed among them.

1836. Special features exist among the Kikuyu which have no counterpart among most of the other tribes. Partly because of the density in which their land is now inhabited, and partly because of peculiarities in their system of land tenure, more actual loss and inconvenience is likely to be caused in their case if a man is required to move his huts and go and live and cultivate elsewhere. For this reason we have recommended a cash compensation, which we shall not find to be necessary in the case of those tribes which have a less individualized form of land tenure.

The Masai.

1837. The tribal settlement with the Masai was secured by agreement, and must be held to have covered all rights both public and private. The only point of doubt which exists in our minds is whether a few farms on the Mbagathi River, which have been alienated by an oversight, lie partly in the Masai Native Reserve or in that part of it which might be held to be subject to certain private or group rights of the late Laibon Lenana's successors in office. We have recommended (section 692) that the Local Native Council should receive the amount which was actually paid to Government for the purchase of the land, and that the question of whether the Laibon is entitled to a share in it should then be investigated. All rights of the Masai on these farms, both public and private, should then be extinguished.

The Kamba.

1838. In the case of the Kamba, we are fully satisfied that the settlement which we have proposed is an equitable settlement of all rights, both public and private. By the recommendations made at sections 759 and 787 above the tribe will gain a very large addition of territory. Any natives disturbed by reason of the proposed Kikumbulu exchange will be amply compensated by the greater extent and better quality of the land in the area which the tribe would receive in exchange and to which they could go.

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There are no other private claims which need be considered: any natives who were dispossessed by reason of the alienations of a generation ago have long since found new homes in the tribal territory.

1839. The tribes of the Northern Frontier and Turkana Province are nomadic in character and private tenure of land does not exist in any recognizable form. When we recommend, in general terms, that no private rights of natives to any land outside the native reserves should be deemed to exist except such as may be held on private title, we are making a recommendation which probably does not affect them in any sensible degree. Nevertheless, it will probably be better to consider the Northern Frontier and Turkana Provinces as excluded from the scope of the recommendation. In so far as private rights to land may be conceived to exist among them, they should not be debarred from consideration within the general limits of the land occupied by the tribe. Outside those limits, no member of the tribe should be deemed to have private rights, unless he secured them on some form of title.

The Tribes of
the Northern
Frontier
and Turkana
Provinces.

1840. For the tribes of the Rift Valley Province, the Suk, the Njemps and the Kamasia, we have made proposals which will result in extensive additions to the native reserve. The settlement with the tribe should be held to comprise a settlement with all its members, and no private rights of natives of these tribes outside the limits of the native reserve should be held to exist. We are satisfied that no hardship will result from this recommendation.

The Tribes of
the Rift
Valley
Province.

1841. Certain families of Kamasia and Dorobo have rights of grazing in parts of the area known as the Grogan Concession, and any recommendations which we may make for a general expunging of private rights outside the reserves, except such as may exist or be created on title, should not be held to affect these rights of grazing.

The Grogan
Concession.

1842. The Elgeyo made certain claims to have exercised rights of grazing on the Grogan Concession, but the contention was not substantiated. We have recommended an addition to this reserve amounting, on balance, to 16½ square miles (section 1027), and we consider that any question of private rights may be held to be merged in this settlement with these tribes.

The Elgeyo,
Cherangani
and Marakwet.

1843. The case of the Nandi resembles that of the Lumbwa, but natives disturbed from the Kipkarren farms actually received compensation at the rate of Rs. 50 a hut. On the Kaimosi farms there were, so far as we are able to ascertain, practically no natives at the time of alienation. The Kaimosi and Kipkarren farms remain theoretically in the reserve, though alienated on 999 years' lease, and the Native Council gets the rents. At sections 1065 and 1068 we have made recommendations which offer a full recompense

The Nandi.

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- to the tribe for the true loss sustained by reason of the alienations. We have done our best to reach a settlement fair to all parties, and we consider that it would not be right or equitable at this date to consider individuals as apart from the tribe.

The Elgonyi. 1844. We have made recommendations at section 1087 above that the Elgonyi be moved from the Trans Nzoia farm area, compensation being paid to any of them who have been in residence for more than three years. After the compensation has been paid and the move has taken place, any private rights which they may have could equitably be extinguished.

The Lumbwa. 1845. We shall next consider the Lumbwa. At the time of the alienations they were a semi-nomadic tribe, who used to move their dwellings freely and frequently as they sought for better pastures. No perceptible difficulty arose about the tenure of land, and the loss occasioned by disturbance was nothing but the labour of building a new hut, and conceivably a loss of amenities, although when the group moved as a whole in accordance with its own nomadic custom it is not easy to perceive what amenities were lost. The loss occasioned by the alienations was almost exclusively tribal, since it caused a restriction of the area over which the common right of grazing could be exercised, and it is difficult to say that any one native suffered from it more than another.

We do not wish to contend that, if some fresh alteration of boundaries were to take place to-day, it would not be right to compensate the individuals affected. It would obviously be just to do so, but in seeking a settlement of difficulties arising from alienations which took place many years ago, there is such a thing as being too meticulous, and we believe that at this date, if we were to seek out a few special cases of Lumbwa who were personally affected and make a distinction between them and other natives who may have gone later on to the farms as squatters, the action would not be appreciated by the tribe and the distinction would be accounted as invidious.

1846. We have therefore concluded that the general settlement which we have proposed, by which the tribe gets land in Chepalungu, subject to an obligation to receive certain Dorobo, is an equitable settlement of all rights, both tribal and private, and that all Lumbwa claims of right on the farms should now be extinguished. Natives will have the option of signing squatter contracts or going to live in the reserve or in the block which is recommended to be added.

The Kavirondo. 1847. We do not find on the evidence that any section of the Nilotic Kavirondo has made good a claim to have lost any land over which private rights existed. The question of private rights outside

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the reserve, therefore, in our opinion, does not arise. The tribe as a whole may possibly be held to have suffered a very small loss of territory in respect of Mr. Maxwell's farm, but we do not consider that the loss was such that it need be regarded at this date, except that we have recommended that the Kavirondo should be allowed to bid for the farm should it come on the market.

1848. We find that the only loss which may be suffered by the Bantu Kavirondo is in respect of certain mining operations, and we have made full recommendations for compensation both of the tribe and of individuals.

1849. If the proposals which we have made for additions to the reserve are accepted (*see* section 1276 above), there will be no hardship in extinguishing native rights outside the boundaries as reconstituted. But if the recommended additions are not made, then there are large numbers of Teita natives living outside the reserve whose rights it would not be fair to extinguish without full compensation. It is obvious that the fairest solution is to make the additions as recommended, and avoid a complication of rights which would be likely to cause the greatest embarrassment in the future. The Teita.

1850. The additions recommended at sections 1229 and 1230, by which 22½ square miles would be added to the reserve as Class B, would augment the reserve by nearly 50 per cent. No suggestion has been made to us that any Taveta have private rights outside the reserve, but, if there are any such, we are satisfied that, in view of this large increase of the tribal territory, they may justly be expunged. The Native Council should be free to make such arrangements as it may think fit for the purpose of compensating any individual whom it may consider to be adversely affected. The Taveta.

1851. Certain Duruma natives are cultivating on alienated lands in the Mwachi Valley, and it is clear that there was already extensive native occupation before the land was alienated. It is stated in the agreement made with the Duruma elders in 1908, which is quoted in section 1205 above, that any original "owners" and their families cannot be disturbed without compensation. The claim to compensation might also extend to other natives living on the land and to the tribe at large, if the suggestion that the Duruma were not willing parties to the original agreement is true. But, as we have already written in section 1209 above, we doubt whether we are in possession of all the facts, and have therefore recommended an investigation by the Provincial Commissioner. The Duruma.

1852. Meanwhile it is clear to us that there are rights on the land which cannot be expunged without compensation. The nature and extent of those rights will have to be ascertained. The Mwachi Valley is actually situated within the ten-mile strip and is part of the Kenya Protectorate.

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The Kenya
Protectorate.

1853. Private rights in the Coast strip (i.e. the Kenya Protectorate) are so involved as to be a matter for special and expert study, such as we could not have undertaken without transferring our headquarters to the Coast and conducting an investigation through several months. We do not think that anything of that kind was required of us, and we note that Government has appointed a Departmental Committee whose terms of reference include this matter. So far as we are able to determine, native private rights in the Coast ten-mile strip are not susceptible of treatment by the method which we are contemplating, and must be taken to be excluded from the scope of our recommendations.

Recommendation.

1854. We now proceed to our recommendation, which is as follows :—

Provided that all the recommendations which we have made for extensions of native reserves are accepted; and provided that compensation in other forms is paid in those cases in which we have recommended it; and provided that this recommendation shall not be deemed to affect the Kenya Protectorate; we recommend the extinction of all native rights in land other than land gazetted as Areas A, B, or C, whether such rights be of tribes, groups, clans, families or individuals, except such rights as may be enjoyed by individual natives under specific title issued to them.

Further, we recommend that steps be taken to render section 86 of the Crown Lands Ordinance, 1915, and section 31 of the Crown Lands Ordinance, 1902, inoperative both in existing and future leases.

Further provided that :—

- (i) The rights of labour-tenants secured upon contract shall not be affected by this recommendation.
- (ii) Existing rights of grazing in the 'Grogan Concession' shall not be affected.
- (iii) Existing 'right-holders', living on farms under the protection of section 86 of the 1915 Ordinance or section 31 of the 1902 Ordinance, shall not be disturbed until they have reaped their crops.

(Note.—This recommendation should not be read in such sense as to deny the rights of tribes such as the Galla or Boni, or the tribes resident in Turkana and the Northern Frontier, to be protected by Government in the use and enjoyment of land, although no reserves have been specifically set aside for them.)

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1855. The space given to the discussion of this matter may convey the impression that the numbers of natives affected are more than is in fact the case. The only place where the problem has arisen in anything like an acute form is Kikuyu, and there it is believed that the number of persons who could justly claim the benefit of section 86 and corresponding sections, and are still living on the farms, is not more than two or three hundred, inclusive of women and children.

Numbers of
Natives
Affected.

1856. The disturbance likely to take place in other areas is almost negligible.

1857. The necessity for the recommendation has been sufficiently illustrated in the part of our Report which deals with the Kikuyu. It is not too much to say that relations between the races were becoming embittered because of the extravagant pretensions of this tribe. Our investigations have satisfied us that, as a tribe, they have certain legitimate grievances, which we have been at pains to rectify. But their claims and pretensions were exaggerated out of all proportion to the truth, and we find it essential to the future well-being, both of the tribe in particular and of the country at large, that the settlement now proposed should be definite and final, and therefore it was absolutely essential to be rid of such potential fruitful sources of trouble as section 86 of the Crown Lands Ordinance. Moreover, if we are to consider what facilities natives ought to have in respect of land outside the reserves, it is essential that we should start from a firm basis and not be encumbered by the existence of ill-defined and nebulous claims.

The Necessity
for the
Recommendation.

1858. We believe that the final settlement of this matter would preferably be effected by Order in Council.

Desirability of
an Order in
Council.

CHAPTER VIII.

FACILITIES RECOMMENDED TO BE PROVIDED FOR NATIVES OUTSIDE NATIVE RESERVES.

1859. In this chapter we shall deal with a series of questions relating to the facilities to be provided for natives in areas outside the reserves. We shall describe briefly the conditions in which natives at present reside outside their reserves, whether in towns or as resident labourers on farms. We shall refer to some specific difficulties which have arisen, and shall make recommendations regarding them. But the principal matter to which we shall devote our attention is the provision to be made for natives who are discharged from the farms, or who find themselves unemployed and unwanted in the towns, or who are capable agriculturists and wish to hold land on a more individual form of tenure than is yet possible in the reserves. We shall first discuss labour-tenants; then urban natives; and finally we shall explain in more detail than we have yet given our proposals regarding C and D areas, which form a prominent part of the solution which we offer to the problem.

Labour-
tenants on
Farms.

1860. There is no reliable estimate of the total number of "squatters"—officially styled "resident native labourers"—employed on farms. A memorandum produced in evidence computes the number of Kikuyu resident outside their reserves to be as many as 110,000 (inclusive of women and children), and most of them are squatters. The total from other tribes is not so formidable, and the sum total of all squatters may probably be found to be in the neighbourhood of 150,000. The contract on which these natives work ensures to them a right to land on which to build a dwelling and to cultivate, and also lays down the number of stock which may be brought on to the farm and implies a right to pasturage for them. There is also an obligation to work for a period of not less than 180 days for a wage specified. No charge or deduction from wages is made in respect of the land.

1861. In view of certain criticisms which we have read, we take this opportunity of stating that the contracts are completely voluntary, and natives go to work on the farms because it pays them to do so. The chief attraction is that they get better grazing for their stock. This is not necessarily because the land on the farms is better than land in the reserves, nor because insufficient lands were reserved for their legitimate needs. It is often because the natives have misused their own land by constant overstocking.

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1862. After some years on the farms, it is nearly always found that the stock has improved in quality and increased in numbers, and it is beyond question that labour-tenants own more than their relations in the reserves. They are able to acquire more wives and have more children, and it is computed that, for this reason, their rate of population-increase is greater than in the reserves.

1863. On the expiry of the contract labour-tenants sometimes suffer certain disabilities, to which we shall allude, and for which we shall propose remedies in so far as they relate to land and fall within our terms of reference. But, generally speaking, it is true to say that the labour-tenant, after he has finished his contract and returned to his reserve, is materially better off than his neighbour who stayed at home, notwithstanding that some of his cattle may die when they return to the reserve, and that he may be put to some trouble and expense in re-establishing himself on his former land.

1864. On expiry of the period specified in the contract, unless the labour contract is renewed, the tenancy expires with it. This might be held to give insufficient security to tenants in cases where an employer cuts down his labour force by way of retrenchment and through no fault of the labourers themselves. In the case of a squatter family which has been absent from the native reserve for several years, the disturbance might be serious. It would therefore be possible to argue that, when the tenant has performed the terms of his contract faithfully and is willing to renew it, he should not be evicted without compensation.

Conditions on
Expiry of
Contract.

But such a provision, though on the face of it just, would seldom prove of practical assistance to the tenant, and would certainly lead to a number of bogus claims. We consider it a better solution at this stage of the country's progress that Government should accept the obligation of finding land to which time-expired squatters can go, either in their own reserve, or, if they prefer it, in C Areas, and that care should be taken to arrange the move as expeditiously and cheaply as possible.

1865. It is represented that in the case of the Kikuyu a returned squatter family often has a difficulty in re-establishing itself in the reserve, either because it belongs to an *mbari* which lost its land in consequence of the alienations which took place in the first decade of the century, or because other right-holders on their *githaka* have extended the area of their cultivation and there is no room left for them.

Special
Difficulties in
Kikuyu.

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1866. We consider that these allegations are much exaggerated but have a certain degree of truth in some cases. The existence of a Kikuyu Native Reserve implies that every Kikuyu must have a right to live in it, as least as a tenant, and we feel that there is some danger that the conception of private rights in Kikuyu may be pressed to an extent which is incompatible with this requirement. We therefore recommend, both in respect of the Kikuyu and generally, that rules should be made under the Lands Trust Ordinance, giving powers to District Commissioners, subject to whatever safeguards may be deemed necessary, to provide for the accommodation of landless natives in their own reserve where they experience difficulty in finding such accommodation for themselves.

1867. In the case of Kikuyu there should be a rule to the effect that the District Commissioner, after consulting the Local Board, might require any landless family to be received on any *githaka* where there is room, but preferably on a *githaka* of the same clan in an area which is comparatively sparsely inhabited. Such a provision will largely remove any grievance on the score that ex-squatter families are unable to find accommodation in the reserves, while in case they may prefer to take up land on a more individual form of tenure they will have the alternative of going into C or D Areas and taking land on lease. When one reflects that the three Kikuyu districts are only 1,931 square miles in extent, even with the addition of Mwea, it is apparent that the possible return of 110,000 squatters would augment by 57 to the square mile a population which is already dense enough to cause embarrassment. While such a contingency as the return of all the squatters and their stock need not be considered, there seem to us to be good grounds for taking precautions.

1868. We have recommended extensive additions to the Kikuyu Reserves on economic grounds, and we have provided for the establishment of a large C Area on the Yatta. These two facilities, taken together, as well as the introduction of greater elasticity into the Kikuyu system of land tenure and a greater possibility of interpenetration between tribes, should go far to alleviate the difficulties of finding accommodation for time-expired squatters, and be adequate to meet any contingency which is likely to arise for many years to come. The problem in the case of the other reserves is not so urgent.

Urban
Natives.

1869. We now turn to the various questions concerning urban natives. There are two main aspects of the problem: (a) The nature of the provision required for the accommodation of natives in towns; (b) The nature of the provision required for the accommodation of natives who leave the towns. In commenting upon

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these matters, we shall confine ourselves to observations of a general character, since our specific proposals regarding Nairobi and Mombasa have already been made.

1870. Without going into detail we record our opinion that municipal housing schemes, while they fulfil a useful function, are certainly not the whole solution of the problem of finding suitable accommodation for natives in townships. They have three drawbacks : first, they are expensive and seldom repay the money spent on them ; secondly, in order to reduce losses they are bound to charge a rental which few natives can afford, and therefore do not cater for the class of natives which is most in need of protection ; thirdly, they discourage native enterprise and tend to pauperization. It is therefore desirable that any scheme of municipal lodging-houses should be supplemented by a further scheme, such as exists at Pumwani, whereby the Municipality undertakes the responsibility for the layout and administration of a native location, but the natives build their own houses, subject to the design being approved by the Health Authority. In small townships in the Highlands, where most natives are working only on short-term contracts, it would not be reasonable to expect that they should build their own houses, but it is probably more feasible that their employers should build the houses in the shape of labour lines constructed in conformity with the requirements of the Health Authority.

Accommodation for Natives in Towns.

1871. Lodging-houses kept by natives are often undesirable institutions at the present stage of native development in Kenya. Two courses are open : suppression or improvement. In the case of small townships in the Highlands their numbers should be restricted to the requirements of the itinerant population, since housing for resident natives can be provided otherwise, and regular supervision would be difficult. But in larger townships, such as Nakuru, the aim, in our submission, should be improvement rather than suppression, and native lodging-houses certainly should not be discouraged merely on the ground that they compete with municipal housing schemes. They may be useful in accommodating poorer natives who could not afford the comparatively high fees which the municipality is bound to charge, unless the scheme is to be managed as a charity dependent on extraneous support. The keeping of a lodging-house, if objectionable features are removed, is a legitimate enterprise which should not be discouraged, except in very small towns, but should be subject to licence and strict supervision both by the Health Authorities and by the Police.

1872. We regard it as of special importance that native quarters in townships in the European Highlands should not become centres where natives discharged from farms may congregate in preference to returning to their reserves. It would hardly be practicable to

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restrict native residence in such townships entirely to natives who are actually employed in them, but we consider that the regulations should be strict and should keep that general end in view.

1873. In townships which are not in the European Highlands it is less objectionable that quarters should be found for urbanized or detribalized natives, even though they have no work in the town, and therefore the formation of garden colonies in proximity to the towns, as for instance at Makindu, is not altogether to be ruled out. We have already shown that the success of such enterprises is very doubtful, but we think that they have a better chance of success in D Areas, especially down-country, since natives who wish to leave the settlement can more readily obtain alternative land elsewhere, if not as owners, then as tenants to some Arab or native landowner on the Coast.

1874. It is perhaps an observation worth making that the least difficulty in respect of native housing is experienced on the Coast, where most of the land is privately owned, and natives generally make their own arrangements with some landowner. In these circumstances, the task which devolves on Government is not so much the provision of land for native settlements as the devising of rules for the protection and greater security of tenants.

1875. It is a short-sighted view to suppose that urbanized natives must of necessity be unsuited by conditions of life in their own reserves, or that townships will not grow up in the reserves where they may live in congenial surroundings. Plans for townships in native reserves will certainly have to include residential sites for natives. It may also be expected that considerable villages and possibly townships will grow up in C Areas.

1876. Again, it must not be supposed that many of the natives who live in the towns have become so thoroughly deruralized that they could not resume an agricultural life and be content.

1877. We therefore recommend that the general method of dealing with natives who are not wanted in the towns, and have no means of honestly supporting themselves there, should be to return them to their reserves. If they do not wish to remain there, they have the alternative of taking up land in C or D Areas.

1878. In respect of any native of uncertain origin, who may be ordered to leave a town as a vagrant and protests that he has nowhere to go, we recommend that the District Commissioner, or such other authority as may be appointed, should have the power to determine, after due inquiry, the tribe and reserve to which such native properly belongs, or with which he has most affinity, and that there should be a power to send him to such a reserve.

Accommodation for Natives who leave the Town.

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If he does not like the life there, he would probably not have much difficulty in arranging to be received as a tenant in a C or D Area, or, if he can find the capital, in taking up land there.

1879. We now turn to the consideration of C Areas, and the facilities to be enjoyed by natives in them. The following is a schedule of the areas which we recommend to be C Areas. They are shown on the map following section 2152 :—

Schedule of
C Areas.

TABLE No. 4.

SCHEDULE OF NATIVE LEASEHOLD AREAS.

(Native Areas Class C.)

	Approximate area in Square Miles
1. The area between the Mwitwa Siano river on the Yatta and the Kitui Native Reserve as shown on the map following section 796.	170
2. The land to the south of the Uaso Nyiro river, lying on both sides of the Ngare Ndare in the Northern Frontier Province; being the areas marked 2 and 4 on the map following section, 884 but excluding :—	
(a) Such part of the area 2 as may be wanted for the Mukogodo.	
(b) Such part of the area 2 as may be required for veterinary purposes or in connexion with a fertiliser factory.	
(c) The eastern end of the area 4.	
<i>Note.</i> —The total extent of the area contained in 2 and 4 is approximately 1,150 square miles, After making allowances for (a), (b) and (c) above, we may set down the balance roughly as 700 square miles	700
(3) The area shown as " E " on the map following section 700 to the Report. It is the area to the south eastward of Mbagathi Township Reserve, described at section 706 of the Report. Its constitution as a Native Leasehold Area must be contingent on the necessary arrangement being made with the Masai ..	69
	939

1880. We recommend that every C Area should be under the supervision and control of the Provincial Commissioner in whose province it is situated, and that he should deal with it through an advisory body constituted on the lines of a Local Land Board in a native reserve. As the area becomes more occupied and settled, a Local Native Council might be constituted, from whose members the Local Land Board would be chosen with the District Commissioner as chairman.

Supervision
and Control of
C Areas.

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1881. We have already recommended (section 1469) that the external boundaries should be under the protection of an Order in Council and of the Lands Trust Board, and we now recommend that any rules made for the management and control of land in C Areas should be under the Lands Trust Ordinance. We consider that the Governor should have the power to make such rules, subject to a power of disallowance by the Secretary of State.

Methods by which Natives should apply for Land.

1882. We consider that natives wishing to obtain land in C Areas should apply through the District Commissioner of their reserve, except that in cases in which they are living a long way from their reserve they should be able to apply through the District Commissioner of the district in which they are living. The District Commissioner should help them to make their applications in suitable form, and should forward them to the Commissioner of Lands with his remarks.

1883. It will no doubt be possible for standard forms of application to be devised to suit the various types of lease required. This will be of advantage, provided that it does not lead to excessive standardization.

Method of granting Original Applications from Natives.

1884. The Commissioner of Lands should have the power of granting or refusing original applications from natives after reference to the Chief Native Commissioner. Provided that he should not grant an application to which the Chief Native Commissioner objects. When an application is granted, the Commissioner of Lands should execute the lease.

Forms of Lease.

1885. We are strongly opposed to any measures which would seek to confine the various forms of lease too rigidly into categories. If we discuss in too great detail the conditions which should be imposed, we may convey the impression of attempting to stereotype. We shall therefore deal only with the leading features, and the major safeguards which in our opinion are essential to success. We shall first consider the conditions which should govern leases of land to natives.

1886. We shall distinguish between three main types: (a) Leases of land to be held on group tenure; (b) Leases of land to be held on individual title; (c) Leases to corporate bodies. We shall describe the general conditions which we consider to be suitable to each type, but this classification is for the sake of clearness only, and we do not suggest that every lease should necessarily conform to one or other of these patterns.

Reason for allowing Group Holdings.

1887. Seeing that C Areas are primarily intended for natives who desire to hold land on a more individual type of tenure than is possible in the reserves, the necessity for group leases may be

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called in question. But we are satisfied that it is too much to expect of natives that they should be prepared at one leap to emerge from tribalism and hold land completely on an individual basis. There may be some natives who are capable of doing so, and we shall provide for their needs. But the generality of natives certainly will be better suited at this stage by a type of holding which still preserves features of the group control to which they are accustomed under the tribal system, but which is capable of being transformed and subdivided into individual holdings as the natives become fitted for them.

1888. Since the applicant for a lease might be either an individual or a family, or a family group, or even a collection of natives applying in common, much confusion will arise, unless it is made clear who holds the title and how it passes by succession and inheritance. We must be assumed, in what follows, to be considering the case of pagan or Christian natives, and afterwards we shall examine whether any modification is needed in the case of Mohammedans.

The Titular
Lessee and
Method of
Succession
in Group
Holdings.

1889. We consider that whenever a lease is granted in respect of a family or group of related families, the lease should be issued in the name of the senior representative, who should be regarded as the seigneur. But if the persons for whose benefit the lease is issued are a group of unrelated or loosely related families or individuals, then they should be required to enrol themselves as a corporate body, with a clear method of inheritance, before the lease is issued.

1890. We believe that it is a sufficiently accurate statement of the Bantu system of inheritance to say that there is a power of seigniorv or general control or supervision which passes to the senior heir, while the property itself is distributed among all the heirs by methods varying slightly according to local custom, an undistributed residue sometimes remaining with the senior heir. Those who dispute the truth of this statement in regard to the inheritance of land, will probably admit it in respect of other property. Among all tribes of Kenya, Bantu or otherwise, among whom a recognizable form of right-holding in respect of land exists, we have good grounds for believing that it follows these general lines.

1891. We suggest that in cases where the leases have been issued to a family or family group this customary practice can be turned to good account by a provision, which could be regarded as a logical extension of custom, that the title, as embodying the seigniorv, should pass to the senior heir, but that the right of use should be distributed. In other words, the land would be impartible in respect of title, but partible in respect of use.

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1892. In so far as we are able to judge, there is nothing in these provisions which would be repugnant to Mohammedan methods of succession, since in distributing the user regard would be had to the due proportions fixed by Mohammedan law. But if a Mohammedan group or family should be unwilling to apply on these terms, the alternative should be open to it of applying as a body corporate, stating in the application the proposed method of succession and inheritance. But the application should not be granted unless it provides clear safeguards against uneconomic sub-division and fragmentation and against the contingency that the title may become encumbered by dubious rights and claims.

1893. The state of things existing on the Tana River, where titles are inextricably mixed and confusion prevails, gives a clear warning of the necessity for these precautions.

1894. Our further remarks below, unless otherwise stated, are to be understood to apply to group or family leases on a basis of native custom rather than to leases to corporate bodies.

Settlement of
Disputes.

1895. Disputes affecting title would naturally be settled in the ordinary courts of the Colony. But disputes might also occur between "right-holders" or tenants, when a large area inhabited by several families is comprised under a single lease. We recommend that the lessee, as "seigneur", should be arbitrator, but that, when he has given his arbitration, if the parties refuse to accept it, they should be able to file a suit in a native tribunal to be constituted under the Native Tribunals Ordinance, subject to revision and appeal as provided in that Ordinance and with the Provincial Commissioner as the final authority.

Provision for
the Prevention
of excessive
Sub-division
of User's
Rights in
Group Leases.

1896. In all cases of family leases it would be necessary to provide against the possibility that the land might become excessively subdivided in use because of the number of right-holders; or that some right-holder might leave the land and yet retain his interest, which would be inherited by his heirs after him, with the result that the land would become burdened with vague and nebulous rights. To this end we recommend: (a) That, if a right-holder has been absent from the land for more than three years, and has made no use of the land either himself or by agent, the seigneur should be able to approach the Local Land Board for a declaration that such right-holder has forfeited his rights, and, if the Local Land Board agrees, such rights shall be forfeited, subject to a right of appeal to the Provincial Commissioner; (b) That, subject to the approval of the Local Land Board and the Provincial Commissioner, the lessee should have the power to buy out superfluous right-holders. Provided, firstly, that he should not be able as a matter of ordinary practice to buy out his senior heir or that heir's immediate family, or any old or decrepit persons who by native law and custom are

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dependent on him for support; and, secondly, that any person aggrieved in respect of the amount of compensation offered or in respect of the redistribution as between right-holders should have the right to file a suit in the native tribunal.

1897. It will sometimes happen, when a lease of a large area has been given to a group, that the holdings of individual right-holders would tend to become excessively fragmented, as they often do under the *githaka* system. It is most important that this should be prevented. Although large group-holdings are suitable to natives who have not yet fully emerged from tribalism and should therefore be allowed in the early stages of the occupation of C Areas, it is certain that leases must ultimately take a more individual form. It is therefore essential that individual shares in group holdings should remain consolidated, so that, when the time is ripe, subdivision of the lease may take place until eventually the group estate is broken up into private estates secured by separate leases.

Provision for
the Prevention
of excessive
Fragmenta-
tion of User's
Rights in
Group Leases.

1898. We therefore recommend that the lessee should have power, with the consent of the Local Land Board and the District Commissioner, to consolidate the holdings on his land by means of a redistribution between right-holders; provided that any right-holder aggrieved by the redistribution might file a suit in the native tribunal. We are further of opinion that if the lessee fails to take the necessary steps to keep the right-holdings on his land reasonably consolidated, the District Commissioner, with the approval of the Local Land Board, should require him to consolidate them, and, if he still fails to do so, the Provincial Commissioner should have power to recommend the cancellation of the lease, and that, subject to the consent of the Chief Native Commissioner, the Commissioner of Lands should cancel it. The apparent harshness of this provision would, no doubt, be mitigated in practice by giving the lessee a reasonable period in which to dispose of the land by approved transfer.

1899. It should be lawful for any right-holder having a share in any group holding to apply for a separate lease to be issued to him in respect of his holding, which would then become distinct from the parent holding. The application should be made to the Provincial Commissioner, who should consult the Local Land Board before making his recommendation. If it is found practicable, we consider that the Provincial Commissioner should be empowered to issue leases in respect of such subdivisions of main blocks, a local register being kept in the office of the District Commissioner. It is important, however, that subdivision should not be allowed to an extent which is uneconomic.

Provisions
regarding
Sub-division of
Leases issued
to Groups.

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**Transfer of
Lease in the
case of Group
Leases.**

1900. Transfer of the lease by means of a sale of the whole block comprised by the group lease should only be allowed with the sanction of the Provincial Commissioner after consulting the Local Land Board. Transfer of subdivisions should be subject to the same conditions. Provided that temporary pawning of the use of land in accordance with native law and custom should be deemed to be permissible by verbal arrangement, save in so far as the practice may be prevented or restricted by rule.

**Consideration
paid for
Transfer in
respect of
Group Leases.**

1901. The consideration paid for transfer of a group lease should be paid to the lessee from whom the land is transferred, and he should make distribution to such right-holders as have a right to receive a share. Any right-holder aggrieved should be able to file a suit in the native tribunal.

Tenants.

1902. Tenants should be allowed, and should be deemed to have the rights which they would have under native law and custom, save in so far as they may be regulated and safeguarded by rule.

**Lease of Land
on Individual
Title.**

1903. When the applicant for a lease is a single individual, he should state in his application whether he wishes (a) to hold the land as a group-holding, i.e. as the founder of a family group among whom succession would pass as already described; or (b) to hold it on individual title, in which case the land would be held on similar terms to those on which leases are ordinarily granted to Europeans.

1904. We do not think it right to prescribe any maximum or minimum size of land which should be allowed to be leased on individual title. In our opinion, it is a sufficient safeguard to provide, as we have already suggested, that no lease should be issued to which the Chief Native Commissioner objects. The chief factors in the decision would be the use for which the land is required, and the ability of the applicant party to make adequate use of it for the purpose specified, and the Chief Native Commissioner would naturally take steps to satisfy himself on these points by consulting the District Commissioner and the Local Land Board.

**Transfer of
Individual
Leases.**

1905. We recommend that the lessee should not be able to subdivide, sublet, sell or transfer his interest in the land without the sanction of the Provincial Commissioner, who should consult the Local Land Board before giving his decision.

**Inheritance of
Individual
Holdings.**

1906. When the land has been leased as an individual holding, it is important to ensure that it should be maintained as such. We therefore recommend that when the lessee dies intestate the title should pass by primogeniture. But we consider that the lessee should be able to dispose of the land by will, subject to the following provisions: (1) That he should not bequeath it as an inheritance

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to be held in common; (2) That, although he might dispose of it by specific bequest of particular shares, no share should be smaller than a certain minimum; (3) That, when the land has been bequeathed in shares, a separate lease must be executed in respect of each share, which then becomes a separate holding; (4) That if the will infringes the above conditions, the Local Native Tribunal should advise on a settlement which does not infringe these conditions but otherwise preserves, in so far as possible, the intention of the testator; and the Provincial Commissioner should decide. If it is impossible to arrive at any such settlement, the will should be null and void.

1907. It will sometimes happen that a right-holder in a group holding obtains leave to have his share detached from the main lease by subdivision, and have a new lease issued to him. In such case, he might desire that it should be registered as an individual holding, and not as a group holding. We consider that this should be permissible with the consent of the Provincial Commissioner. This gives a clear method for the devolution of group holdings and their piecemeal and gradual conversion into individual holdings, which we take to be the general end in view.

Conversion of
Group-
holdings to
Individual
Holdings.

1908. The distinction is that, in an individual holding, the title cannot become encumbered by any rights of share-ownership on the part of co-heirs. In a family or group holding co-heirs have rights of user which can only be voided by purchase.

1909. When land is leased to unrelated groups, so that no one person can be said to be the seigneur by native law and custom, we recommend that the lease should not be granted until the applicants have enrolled themselves as a corporate body, with a recognized method of succession. We recommend that no such lease should be granted unless it is made clear, either by clauses in the lease itself or by some rule governing the matter, that due provision exists by which the land can be kept free from the difficulties caused by uneconomic subdivision or fragmentation.

Land Leased
to Corporate
Bodies.

1910. We are inclined to think that this form of lease will be mainly suitable for special forms of enterprise, as for instance when a group of natives want to lease a piece of land on which to build a church. It would also be suitable for co-operative agricultural enterprises, but the greatest caution would be needed in devising the terms of the lease, and it will probably be wise to refrain from issuing such leases until considerable experience has been gained in the administration of C Areas, and the difficulties likely to be encountered are better understood.

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**Duration of
Leases of all
Classes.**

1911. We recommend that the normal period for which a lease should be issued should be for thirty-three years, but it should be renewable if the lessee has complied with the conditions. This and the following recommendations apply to all classes of lease to natives in C Areas.

**Stand
Premium and
Rent.**

1912. We see no reason why the original allotment of land should not be by auction between approved applicants, but we regard this as a matter of administrative detail, on which we make no specific recommendation.

1913. The rents should be fixed so as to give a fair economic return to the Government, but regard should be had to the risks which the pioneers in C Areas will take, and, in our opinion, that consideration would justify a very low assessment of rents and stand premia in the early stages.

1914. We also make the suggestion that payments should be made, in a large measure, in the form of stand premia, so that the rents may not be burdensome. Fees for registration and transfer should be low; otherwise deaths will not be reported, and unauthorized transfers will take place.

**Conditions of
Development,
Conservation
and Use.**

1915. The lease should be subject to conditions of development, conservation and use. The conditions of development need not be exacting, but the conditions of conservation should be strict, and should provide against the wanton destruction of timber or pasture, or the damaging of any watercourse. A certain maximum number of cattle, sheep and goats which the land may carry should be specified, but that number should be liable to revision.

1916. In respect of use, the lessee should be required to keep the shares of individual right-holders consolidated; to demarcate boundaries in such a way as may be required; and to furnish any returns in respect of the number of right-holders or tenants on the land as the District Commissioner may direct.

1917. If the conditions of the lease are infringed, the District Commissioner, after consulting the Local Land Board, and after due warning to the lessee, should make representations to the Provincial Commissioner, who should require the lessee to comply with the conditions forthwith. If he fails to do so, the Provincial Commissioner should be able to recommend the cancellation of the lease, and the Commissioner of Lands, after consultation with the Chief Native Commissioner, should have the power to cancel it.

**Power to
Mortgage
Land.**

1918. We recommend that no native shall have the power to mortgage his land without the sanction of the Provincial Commissioner, which should only be given in cases in which it is sought to mortgage the land to the Land Bank or some other institution approved by Government.

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1919. In our opinion survey is not necessary, but demarcation on site is necessary. The Provincial Commissioner should have power to direct, after consultation with the Local Land Board, in what manner the boundaries of the land leased are to be demarcated, and in the case of group leases should also have the power to prescribe the manner in which the right-holders' shares should be demarcated. We suggest that hedges with occasional standards might be suitable for marking external boundaries, and hedges without standards might be used to mark right-holdings. But this is a point of detail.

Survey,
Registration
and
Demarcation.

1920. We consider that the District Commissioner should keep the register, and that it should be as simple as possible.

1921. There should be the usual special clauses enabling the Government to conduct roads, telegraphs, etc., through the land; and to resume any land required for public purposes upon payment of compensation. We recommend also a clause to provide for forfeiture in the event of rebellion or sedition.

Special
Clauses in
Leases.

1922. It is most important that there should also be a clause stating specifically that the terms of the lease may be varied by proclamation or rule under the Lands Trust Ordinance, which may be either of general or special application.

1923. In recommending that it should be possible to modify the terms of leases by means of proclamation or rule, we are following the precedent of the Quit Rent Titles in the Transkeian Territories of the Union of South Africa. There the Governor-General has the power to modify the conditions of the title by proclamation, and has in fact made use of the power to do so. The reason for the provision is clearly that the form of land tenure granted to natives, there as well as here, cannot be regarded as final, but must be modified from time to time as natives become fitted to exercise a fuller freedom in matters relating to the owning and disposition of land. For instance, although the Quit Rent System was inaugurated in the Transkei in 1898, the natives were not given powers of transfer and sale, and the embargo was still in existence when the South African Economic Commission issued its Report in 1932, in which a limited freedom to buy and sell is recommended, but only up to a certain maximum.

Modification
of the Terms
of Leases by
Proclamation
or Rule.

1924. Circumstances may require us in Kenya to proceed somewhat more rapidly, and it appears to be necessary, even at this stage, to allow a limited freedom to buy and sell in C Areas. But the more rapidly we are compelled to advance, the greater the chance of making mistakes, and the greater the necessity for such a provision as is here proposed. It will have the double purpose of

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enabling restrictions to be removed when the necessity for them disappears, and of introducing fresh safeguards which may be found to be necessary, and generally of rectifying mistakes which are bound to occur.

General
Comment on
the above
Proposals.

1925. The criticism is likely to be advanced that our proposals regarding the leasing of land to natives in C Areas are too complicated. We reply that it is a complicated matter, and we are satisfied that for the successful settlement of a native population in a C Area there must be a form of tenure which is not entirely divorced from native custom.

1926. The alternative would be direct leases to individuals, and it is doubtful whether, in settling a native population in a C Area of some 30,000 acres, for example, it would really be less complicated for the Commissioner of Lands to grant a large number of leases to individuals, than to grant a smaller number of block leases to family groups.

1927. An advantage of the group lease is that it allows more freedom. Local arrangements may be made between right-holders in a single holding and redistribution of internal boundaries between them may take place without reference to Government. Inheritance and succession of user's rights inside the total area of the group holding is determined by native law and custom, or in the case of Mohammedans by Islamic law. The seigneur becomes in effect the local agent, and the danger is avoided of cramping development by excess of registration and record.

1928. But in a system of small holdings, complicated questions of inheritance will be constantly coming before Government for decision. For instance, the lessee dies, leaving no sons, and the inheritance is disputed. Or a man inherits two holdings, one from his father and another from his uncle, and then dies intestate, leaving two sons; does his eldest son get both (*vide* section 1906) or do they get one each? In a group holding it is only when the seigneur dies that such questions arise, and it is very seldom that there would be any dispute as to who is the legitimate successor.

1929. The respective merits of a system of small holdings for natives and a system based on group tenure have been examined at length in the memorandum, which stands in evidence, in which the Kikuyu system of land tenure is compared with that obtaining in the Transkei. The argument is not capable of compression into a small space, and we have therefore directed that the part of the memorandum which is relevant to this discussion be printed with the record of the evidence (*vide* Evidence, pp. 1069-1098). We find

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ourselves in general agreement with the arguments and main conclusions, and as far as the present question is concerned we are satisfied that the most important points in the issue of leases in C Areas are :—

- (i) That excessive uniformity should be avoided, and that it should be possible to lease both large and small areas.
- (ii) That some leases should be on a group or family basis, preserving the essential features of native tenure but embodying safeguards, and some on an individual basis.
- (iii) That there should be means of gradual conversion of group leases into individual leases.
- (iv) That freedom of action and enterprise should not be stifled by excessive regulation.
- (v) That whatever system is applied, it should not be conceived as final, but should be capable of adaptation to changing conditions.

1930. We consider that it should be possible for land to be leased to non-natives : (a) on a short-term lease for any purpose, in such part of a C Area as is surplus to the immediate or near future requirements of the natives ; (b) in any unalienated part of a C Area for a purpose which is beneficial to the natives, the lease being for such period as may be considered necessary.

Conditions governing Leases to Non-natives in "C" Areas.

1931. In cases under (a), the Commissioner of Lands should execute the lease subject to the approval of the Chief Native Commissioner. The Provincial Commissioner should be given an opportunity of making recommendations as to the proposal.

1932. In cases under (b), the consent of the Lands Trust Board should be necessary, except that, if the Lands Trust Board objects and the Governor considers it to be of importance to the Colony that the application should be granted, he should be able to appeal to the Secretary of State, who should decide.

Note.—Applications as under (b) should also be possible in cases where the land has already been alienated, provided that the lessees are willing to sell and the transfer is sanctioned by the Provincial Commissioner.

1933. The difficulty of settling large numbers of natives in unfamiliar surroundings in untried areas will be less acute if facilities are granted for a few large enterprises conducted by Europeans or other non-natives. They will help the natives by developing the resources of the country, by offering employment, and by creating a local market for produce. While large agricultural enterprises of any kind would serve a useful purpose in this regard, those are especially to be encouraged which admit of a high degree of co-operation with natives.

Importance of encouraging large Enterprises.

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1934. As the C Areas fill up and a resident native population becomes established, the conditions governing leases to non-natives should be made more exacting, and only such undertakings should be allowed as can show a clear and direct benefit to the natives. But a policy of rigid exclusion against non-native enterprise is never likely to be wise, and we are anxious that the preference which natives are to have in these areas should not be interpreted in that sense.

**Importance of
an Economic
Survey and a
Lay-out Plan.**

1935. We recommend that an economic survey of each C Area be made, and that a layout plan be devised showing the site of proposed roads, social service centres and trading centres. However often it may be necessary to alter it we consider that such a plan should exist, and it is likely that a timely planning in advance of requirements will sometimes save Government the expense of having to reacquire alienated land which may afterwards be found to be needed for public purposes.

**Facilities for
Natives in D
Areas.**

1936. We find no occasion for making recommendations in regard to the method of tenure of land by natives in D Areas. Our general recommendation on the question is that natives should be on the same footing as persons of other races. We do not consider that it would be wise, for the present, to issue any group leases in such areas except to corporate bodies. But use may be made of the experience gained in C Areas, and, in so far as it is found that group leases or a modification of them could be successfully administered in D Areas, there is no reason why they should be debarred from consideration. Our general feeling on the matter, however, is that tenure of land in D Areas should normally conform to civilized practice.

CHAPTER IX.

DEFINITION OF THE EUROPEAN HIGHLANDS.

1937. The sixth term of reference, under which we are required to define the "Highlands", is as follows :—

The Term of Reference.

" To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923."

1938. The impression is perhaps conveyed that there is an area generally agreed, within approximate boundaries, to be the area within which a European privilege obtains, and that we are merely required to determine disputed points on the boundary by exact delimitation. So far is this from being the case that a Sub-Committee of Executive Council, sitting in 1929, proposed a boundary enclosing (in round figures) some 16,000 square miles, while the Governor proposed an alternative boundary enclosing about three times that area. These two boundaries have no points in common, except where they intersect, and no decision has ever been made between them. Our task therefore is much greater than the simple resolution of a few points of doubt. The whole boundary is undetermined, and the material does not exist from which the issue could be settled by a finding on facts. Neither Lord Elgin's declaration of 1906 nor the White Paper of 1923, which are the basic guarantees of the European privilege in the Highlands, afford any direct help in fixing the position of the boundary, except at two points on the Railway. In these circumstances, since it is impossible to state where the boundary is, we conclude that we are expected to recommend where it ought to be.

1939. Our recommendations must depend on two principal considerations : (1) What inferences concerning the position of the boundary were the Kenya Government and the public entitled to draw from Lord Elgin's declaration of 1906 and the White Paper of 1923? (2) What is the present situation?

1940. Seeing that we have been especially enjoined to base our recommendations on facts as they exist to-day, we regard the latter consideration as at least as important as the former.

1941. The history of the matter is as follows : In May, 1905, a Land Commission, consisting of Mr. Justice (now Sir Robert) Hamilton, Mr. J. W. Barth (now Sir Jacob Barth), Lord Delamere, and Mr. Frank Watkins, reported in favour of the maintenance of a European Reserve, and accepted Kiu to Fort Ternan as a suitable definition " without wishing to bind themselves too closely to that area or to restrict its limits."

Declarations affecting the Boundaries.

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1942. In September of the same year, Sir F. J. Jackson (then Commissioner) wrote to the Land Officer :—

“ I am not aware if a definite ruling was laid down or not, but it has always been understood that no large grants of land between Kibwezi and Fort Ternan could be taken up by Indians, and you can act on this understanding.”

1943. In July, 1906, Lord Elgin, as Secretary of State for the Colonies, expressed his approval of the practice then in force of limiting land-holding by Indians (outside townships) to the areas east of Kiu and west of Fort Ternan. Since settlement at that time was still confined to the general vicinity of the Railway, there was perhaps no great occasion for a more precise definition at that date.

1944. Lord Elgin confirmed his decision in 1908, stating that, while it was not consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the Highlands should not, as a matter of administrative convenience, be made to Asiatics.

1945. The White Paper of 1923 dealt with an objection raised by the Indian community that, whereas Lord Elgin's decision only related to the initial grant of Government land in the Highlands, it has since been stretched so as to preclude the transfer of land from Europeans to Indians. The White Paper ruled that the existing practice must be maintained as regards both initial grants and transfers.

1946. No reference to boundaries was made in the White Paper. It might be argued on the one hand that, in the absence of a statement to the contrary, the declaration must be held to apply only to land lying between Kiu and Fort Ternan, as contemplated by Lord Elgin. On the other hand, a large number of farms had already been alienated outside that area under a Soldier Settlement Scheme restricted to Europeans, and in 1913 two farms in the Kaimosi area had been sold at an auction restricted to Europeans. It is commonly contended by Europeans that the restriction to Europeans observed in the original alienations constituted the land European Highlands, and that the same restriction must therefore be followed in subsequent transfers.

1947. In our opinion, neither of these two views is entirely correct. We cannot agree that, when Lord Elgin set the limits of the European Highlands at Kiu and Fort Ternan, it was permissible to infer that they could never be extended or contracted. The obvious unwisdom of giving any such undertaking in the initial stages of a policy of land settlement should alone be proof against it. To some extent, the alienations under the Land Settlement

Extension of
Boundaries
beyond
the Kiu-
Fort Ternan
Limits.

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Scheme represented an extension, for at least they created a special European interest in certain areas not previously comprised in the European Highlands. These alienations were made with the consent of the Colonial Office, and were a matter within the cognizance of the Secretary of State when the White Paper of 1923 was drafted. It is probable, therefore, that specific allusion would have been made to them in the White Paper if it had been desired to exclude them from its terms.

1948. But if we assume that the area of the European Highlands could be extended so as to include further upland areas which might be considered suitable for European settlers, so also we must assume that they could be contracted by the exclusion of areas which have proved by experience to be unsuitable, since it would clearly be a foolish procedure to reserve permanently and exclusively for European use areas which had proved to be unhealthy for Europeans, but possibly healthy for Asiatics. This, no doubt, is the explanation of the permission which has been granted in a few cases for the transfer of soldier settler farms to Indians. Farms 1608, 1609, 1618, and 1586, in the Muhoroni area, are instances.

1949. There is perhaps a tendency to carry the argument of suitability too far and to contend, as some witnesses have done, that any land which is suitable for European settlement is European Highlands. We are not prepared to accept that view. Conditions in the lowlands improve very greatly as the country is opened up and better housing and sanitation are introduced, and many residents of Mombasa would not admit that the health conditions of the town are inferior to those of Nairobi. But, however healthy they may become, we clearly cannot hold that lowlands are highlands.

The Question
of Altitude.

1950. It is not a mere pedantic point, as if it were a mere accident of terminology that the European reservation has been called the European Highlands. In a country where the immigrant communities are of more than one race, as in Kenya, where there are approximately 39,644 Indians, 16,812 Europeans, and 12,166 Arabs, it is a fair and reasonable arrangement, in the particular circumstances of the case, to reserve agricultural land in the higher and cooler areas for the Europeans, while allowing the Indians and Arabs to take up land in the lower and warmer climates to which they are accustomed in their own land, but, in our opinion, it would not be fair that the privilege be extended to the point of claiming for Europeans the exclusive use of all available agricultural land, even in the lowlands, on which they could maintain themselves. Such a position is obviously insupportable, and we are satisfied that the privilege was only intended to apply to the Highlands.

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1951. Nevertheless we have to remember that it is not the altitude itself which renders land favourable to Europeans, but the cooler and more bracing conditions which go with it. In Kenya the climatic conditions which have in the past generally been regarded as favourable to European settlement have usually been encountered at about 5,000 feet and upwards. But it would be idle to seek a definition of the Highlands by following the 5,000 feet contour line, except as a rough general guide. Climatic conditions are not uniform at all points along such a line, and there would be no logic in following it. It is a question of climate, which can be better ascertained by considering the history of farms which have actually been alienated on the borders of the Highland area, than by slavish following of a contour line.

~The Proposal
of the Sub-
committee of
Executive
Council made
in 1923.

1952. A very able memorandum, submitted to us by the Commissioner of Lands, which we understand to be the work of Mr. C. E. Mortimer, of the Land Department, describes with accompanying maps all the principal proposals which have been made for the definition of the Highlands. The proposal which appears to us to accord best with the *de facto* situation, and also to give the fairest interpretation of Highlands in respect of altitude and climate, is the recommendation of the 1928 Sub-Committee of Executive Council, consisting of the Commissioner of Lands, the Chief Native Commissioner, and the Hon. Mr. Conway Harvey.

1953. The Sub-Committee made three proposals: (a) an original proposal; (b) the same proposal slightly amended by the omission of the Mwea area and the addition of certain words in the form of an explanatory note; (c) an alternative proposal to be considered in the event of the proposal under (b) not proving acceptable. All these proposals may be studied on the map at page 2841 *et seq.* of the Evidence. The definition proposed in (b) was in the following terms:—

“ The Highlands of Kenya comprise the Administrative Districts of Trans Nzoia, Uasin Gishu, Ravine, Nakuru, Naivasha, Laikipia, North Nyeri, Nairobi; and those parts of the Administrative Districts of Kericho, Kiambu and Fort Hall which are not gazetted native reserves; that part of the Machakos district which is not gazetted native reserve, and which lies to the west of Sultan Hamud Station and the eastern boundaries of farm No. L.O. 1758; the Kaimosi farms and that part of the Kisumu-Londiani district which lies east of the eastern boundaries of farms Nos. L.O. 5422, 1612, 3074, and 3075, and north of the northern boundaries of farms Nos. 3075, 1621, 3076 and 1620.

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“ *Note.*—Land in native reserves wherever situated has been excluded from the definition, in order not to restrict in any way the powers of the Native Lands Trust Board to be established under the Native Lands Trust Ordinance.”

1954. The most controversial points in this definition are the northern boundary, which excludes Leroki, indisputably an upland area; and the western boundary in the neighbourhood of Muhoroni. We have already expressed our opinion in Chapter VI of Part II of the Report that Leroki has been rightly excluded, because of the extent of the native interests involved. The other matter has not yet been discussed.

Certain
Controversial
Points.
(i) Leroki.

1955. It appears that in March, 1924, the Commissioner of Lands made the proposal illustrated by the line a—a on the plan at page 2842 of the Evidence, which would have placed the western limits of the Highlands at Kibigori. In 1925, he made an amended proposal, the line b—b on the map, placing it near Muhoroni. The Sub-Committee of Executive Council, sitting in 1929, split the difference and placed it near Chemelil, at the line c—c.

(ii) The
Chemelil Line.

1956. It is understood that the reasons why the Commissioner of Lands amended his proposal of 1924 were partly the fact that a certain number of applications had been received from Indians, asking leave to purchase land in the area, and partly a realization that his original proposal would have placed the boundary too far below the 5,000 feet line, and in an area which cannot with any certitude be called favourable for settlement by Europeans. On the other hand, by setting the line back as far as Muhoroni, he did in fact exclude a large number of farms already alienated to Europeans under the Soldier Settlement Scheme. It might perhaps be argued in two ways whether this impaired the European interest or not. On the one hand, it is possible to point to several Europeans in the area who have sold or have asked sanction to sell to Indians. On the other hand, if the Europeans of the area are regarded corporately rather than individually, it is clear that their corporate opinion would condemn such action and regard it as an infringement of privilege. We consider that the Sub-Committee of Executive Council reached a fair and impartial decision on a difficult question.

1957. There is, however, a comparatively small block of farms immediately to the east of Muhoroni, which was alienated to Indians in 1906. We recommend: (a) That this block should be deemed for the present to be excluded from the European Highlands; (b) That if any plot comes into the market it should be permissible for either a European or an Asiatic to buy it; (c) That when any such plot has been bought by a European, it should thereafter be included in the European Highlands.

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(Note.—This block forms an exception to the general rule which we recommend, that where land is neither a native reserve nor White Highlands it is to be regarded as a D Area, available for alienation to persons of any race.)

(iii) The
Kenya and
Elgon
Boundaries.

1958. There is one part of the boundary recommended by the Sub-Committee where a difficulty of interpretation occurs. It concerns the South Nyeri district. In its first definition the Sub-Committee included this district in the Highlands, except such part of it as was gazetted native reserve. Shortly afterwards it was agreed that the Mwea area should be added to the native reserve, and the Sub-Committee, supposing that there was no longer any part of the district which was not native reserve, excluded it from the definition of the Highlands "as the whole of the South Nyeri district now lies within native reserve".

1959. The Sub-Committee was misinformed. The whole of the district did not lie within the native reserve; it contained also 528 square miles of gazetted forest reserve, part of which is in Mount Kenya forest and the remainder in the Aberdares.

1960. The draughtsman of the map which illustrates the Sub-Committee's recommendation appears to have exercised discretion in interpreting the intention of the Sub-Committee. He has included the Aberdares block of 277 square miles as part of the Highlands and has excluded the Mount Kenya block. We consider that the whole of the Mount Kenya forest reserve should be included.

We consider that the position as regards the forest reserve on Mount Elgon is on a similar footing, and should be treated on similar lines.

In making these recommendations, we are following the procedure adopted by the Committee with regard to other forest reserves similarly situated. The matter is of no great practical importance, since there is no intention of any change of user and the land will continue to be forest reserve. If ever a change of user should take place, the native interest will be sufficiently safeguarded by our recommendation in section 1977 below, in which we deal with this contingency.

(iv) The Mile
Zone.

1961. The definition of the European Highlands, as given by the Sub-Committee, includes "that part of the Machakos district which is not within native reserve and which lies to the west of Sultan Hamud Station and the eastern boundaries of L.O. 1758". This seems clearly to include the Mile Zone to the south of the

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Uganda Railway. But the map drawn to illustrate the recommendation excludes the Mile Zone. We consider the map to be wrong in this respect, and we are firmly of the opinion that it was the intention of the Sub-Committee to include it.

1962. The map illustrating the Sub-Committee's recommendation excludes farms L.O. 369, 370, 371 and 372, since these farms were approved by Executive Council for addition to the Masai Reserve by resolution on 4th April, 1930 (*see* section 696 above). But the Committee's resolution, as worded, includes them. Here we shall follow the map, and not the resolution.

(v) The Kinangop Circumcision Exchange Area.

1963. The Kaptumo block of farms was excluded from the definition of the Highlands made by the Sub-Committee. But we are satisfied that this was not intentional, but that the Sub-Committee, in including in its definition all the farms in the Uasin Gishu district, supposed that it had included these farms, overlooking the fact that they are actually in the Nandi Administrative District. The map drawn at the time to illustrate the the Sub-Committee's recommendation followed the definition as worded, but in spite of that we shall read the definition in the sense in which we are satisfied that the Sub-Committee intended it to be read, and regard these farms as included in it.

(vi) The Kaptumo Farms.

1964. There are no other matters concerning the boundary which we find to be particularly controversial, and we consider that the Sub-Committee reached a fair and equitable decision. Nevertheless, where the map which purports to illustrate that decision differs from it in the points of detail which we have described, we prefer the map, excepting only in the matter of the Mile Zone. Assuming the map to have been amended by the inclusion of the Mile Zone and the Kaptumo farms, we accept it as the basis of our recommendation, subject to certain qualifications and exceptions which we shall now describe.

Our General Agreement with the Sub-committee's Recommendation.

The area shown on the map, together with the Mile Zone, is 16,500 square miles.

1965. In enumerating the qualifications to which our acceptance of this definition must be held to be subject, we shall observe the following order: We shall first state what areas, now included in the definition, ought in our opinion to be excluded; and what areas, now excluded, ought to be included. We shall next deal briefly with native rights or interests. We shall then add a note concerning the position of forest reserves inside the boundaries of the Highlands.

Exceptions and Qualifications.

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Exclusions.

1966. The following areas, included in the above definition, should, in our opinion, be excluded for reasons already given in this Report :—

TABLE SHOWING EXCLUSIONS RECOMMENDED.

Area to which the land excluded is recommended to be added	Present utilization of the land recommended to be excluded					Total
	Forest Reserve	Mission Land	Township Reserve	Alienated Farms	Unalienated Crown Land	
	Acres	Acres	Acres	Acres	Acres	Acres
1) Kikuyu Native Area	13,781	2,430	50	1,328	2,002	19,641
(2) Masai „ „	9,290	..	..	230	4,762	14,282
(3) Kamba „ „	..	..	..	100	720	820
(4) Kerio „ „	3,850	..	..	..	213,518	217,368
(5) Nandi „ „	..	..	..	..	1,920	1,920
(6) Lumbwa „ „	..	..	..	..	94,960	94,960
(7) Kavirondo „ „	..	..	..	..	4,500	4,500
8) Northern Frontier Province „	..	..	..	..	104,000	104,000
	26,921	2,430	50	1,658	426,382	457,491

Total in Square Miles .. 715 (approximately).

Note.—The figures in the above table are explained in detail in Appendix No. 12. Much of the land recommended to be excluded is already in native use, for instance, 79 square miles now occupied by the Uasin Gishu Masai, the land occupied by the Mukogodo, the Njemps in Baringo and by the East Suk in Churo. It is also to be noted that our recommendation regarding the removal of the Tinet Dorobo to Chepalungu will have the effect of setting free several square miles of country for disposal by the Crown as an integral part of the European Highlands. At a rough estimate the total of the areas included in this note would be about 460 square miles.

Additions Recommended.

1967. In connexion with exchanges, we recommend the following additions :—

Item	Acres
1 .. Kithirioni	70 (<i>see</i> section 399 above)
2 .. In connexion with the Mau Forest Exchange	13,245 (<i>see</i> section 694 above)
3 .. In connexion with the farm 410/1 Exchange	230 (<i>see</i> section 697 above)
4 .. In connexion with the Momandu Exchange	20 (<i>see</i> section 774 above)
5 .. In connexion with the Elgeyo Exchange	4,933 (<i>see</i> sec. 1,007 above)
	<u>18,498 acres</u>

or approximately 29 square miles.

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1968. We also recommend a small addition to the European Highlands in the neighbourhood of Sultan Hamud by an extension eastwards between the Mbiuni River and the Railway to a point approximately one mile up-line from Emali Station; the eastern boundary being a line drawn due north from that point to the river. The area thus added would be approximately eleven square miles.

Although this area lies below the altitude which in general we have regarded as Highlands, it is climatically of the same general nature as the Highlands to the eastward of Nairobi. Moreover, a glance at the coloured map at the end of the Report will show that for general suitability of arrangement it is better that this block should be classed as Highlands.

1969. We also recommend the addition of the following items of forest reserve, which would be subject to the recommendation in section 1977 below :—

<i>Item—</i>	<i>Square Miles</i>
That portion of the Mount Kenya Forest which is not included in the Sub-Committee's definition	658
That portion of the Mount Elgon forest reserve which is not included in the Sub-Committee's definition, except the areas recommended in sections 1057 (3) and 1148	213

The total of all additions then becomes 911 square miles.

1970. We are now in a position to define the Highlands. We first took as our basis the map illustrating the proposals of the 1929 Sub-Committee of Executive Council. Although the map did not agree at all points with the resolution which it purported to illustrate, we found it generally preferable, as showing a closer correspondence with existing facts.

The Total Area recommended to be European Highlands.

1971. We first modified this map by adding in the Mile Zone, which, in common with the Sub-Committee, we hold to be European Highlands. We thus obtained a total area of 16,500 square miles. We then made a list of exclusions totalling 715 square miles to be made in conformity with recommendations which have already appeared elsewhere in our Report, and we have now proposed additions totalling 911 square miles. The resultant total area is 16,696 square miles, but the areas have not been so closely ascertained that reliance can be placed on the figures to the nearest unit, and we therefore call the area, in round figures, 16,700 square miles; their position is shown on the map which we present at the end of this chapter as our definition of the European Highlands.

The total amount of forest reserve in this area is approximately 3,950 square miles.

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**Native Rights
and Claims.**

1972. The serious position created by the existence of native rights on European farms has already been reviewed in a previous chapter, in which we have made recommendations for the extinguishing of those rights upon payment of compensation in cases where it is found to be due. We recommend that, 'as soon as that has been done, section 86 of the Crown Lands Ordinance, 1915, should be repealed, and sections 30 and 31 of the Crown Lands Ordinance, 1902, in so far as they still have force, should be repealed also.

**The Kipkarren
and Kaimosi
Blocks.**

1973. The land in which the Kipkarren and Kaimosi farm blocks are situated is native reserve, and therefore in a territorial sense cannot be said to be European Highlands. But we are asked to define the area within which persons of European descent are to have a privileged position, and since we hold that Europeans should have the same privileges in respect of initial grants and transfers of land in these two blocks as they have in the Highlands proper, we include them in the area covered by our definition, but with the qualifications that the land should remain native reserve; that all rents and other profits accruing from Crown leases should be paid to the Local Native Council; and that the natives should retain the reversionary interest.

**Leases to
Natives in the
Highlands.**

1974. In sections 1490 and 1496 we have recommended that land in the European Highlands may only be leased to natives if it is adjacent to the native reserve concerned, and if Government and the accredited representatives of the European Highlands all agree.

1975. This provision is intended to apply to any future applications which may be made for permission for natives to lease land in the Highlands, but we do not suggest that the areas which we ourselves have recommended to be leased to natives in native reserves, Class B2, should be subject to this condition. We presume, however, that Government will not act upon any of our recommendations until they have been debated by the Legislative Council.

**A point
regarding
Labour-
tenants.**

1976. In considering the rights of natives to land in the European Highlands, it is perhaps necessary to mention labour-tenants, or squatters. They have no right to the land, but they have a temporary right to use land while in employment. In our view, care should be taken to ensure that the essence of the contract is a labour contract, the employee being allowed, for his greater comfort, to keep the number of cattle which are necessary for his use. But if he is allowed to keep more than that number the character of the contract changes in effect, until it is predominantly



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a tenancy contract, which, in our opinion, ought to be prevented, as being contrary to the purpose for which the European Highlands have been reserved.

1977. We regard all forest reserves which are completely surrounded by European Highlands as being included in the Highlands, and potentially subject to European privilege, if ever a change of user takes place and the land becomes available for agricultural use. But in respect of forest reserves, such as the Aberdares, which are bounded partly by European Highlands and partly by native reserve, we consider that any question created by change of user in respect of any part of the forest contiguous or near to the reserve should be a special case to be decided on its merits.

Forest
Reserves

1978. It has to be admitted that the provision which we have recommended for natives will entail some sacrifice on the part of the European community. Reluctance to make the concession would be natural, since it was generally believed that the gazette-ment of the native reserve boundaries in 1926 would settle the matter of native claims and requirements in respect of land for many years to come, and a certain exasperation will naturally be felt that substantial alterations have to be made so soon. But exhaustive inquiry has satisfied us that these modifications are necessary, and we consider that, when the evidence has been studied, the need for them should be generally realized.

Loss of Land
sustained by
the European
Highlands.

1979. These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may be again diminished. One of the main objects of our Report has been to frame recommendations which would instil a feeling of security in the minds of the natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans, we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives.

Recommendation for Safe-
guarding the
European
Highlands.

CHAPTER X.

THE POSITION CREATED BY UNECONOMIC ACCUMULATION OF LIVE STOCK, AND PROPOSALS FOR AMELIORATION.

Why Overstocking is a Question relevant to our Report.

1980. It may be asked why a Commission appointed to inquire into the question of native lands should devote so much space to overstocking in native reserves. Our answer is that, under the heading of "The future needs of the natives as regards lands", the use and conservation of their estates is at least as important as the extent of the areas allotted to them; the amount of land required is mainly dependent upon the manner in which it is used. British Administration, by minimizing or abolishing the causes, such as raiding, which frequently spreads disease, and epidemics which, uncontrolled by veterinary measures, formerly used to act as a check on the increase of stock, has caused an enormous addition to the stock population of Kenya, which gravely threatens the whole future of the native lands. This problem is the direct result of British rule, and it is therefore an obligation on Government to face it and devise adequate remedies. It is definitely not a problem which can be solved by an increase of land. If the uncontrolled increase of stock be permitted to continue, then the whole of Africa would be insufficient to satisfy the wants of the future.

1981. We feel that these most essential points have been neglected in the past, and before coming to our recommendations on this difficult question we shall here briefly review the position in the more important pastoral reserves, as it has developed and as we see it now.

The Position about 1900.

1982. At the beginning of this century, in the country now known as Kenya Colony, the cattle had been suffering for the previous twenty years from a series of disastrous epidemics; in numbers they were comparatively few, and the grazing was more than ample to supply their needs.

In 1920.

1983. With the introduction of British Administration, veterinary measures for the control of these diseases were introduced, and by 1920, the cattle population had increased to an estimated total of 3,000,000. Up to that year signs of overstocking and consequent deterioration of land and cattle were hardly noticeable.

1984. We have heard evidence that twenty years ago the Kamasia Reserve was still a well-grassed country, and the Suk were burning their grazing areas every year with a view to controlling

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the grass. Also, to the personal knowledge of two of our members, the conditions in the Kamba Reserve and in the drier parts of the Masai Reserve were still tolerable.

1985. Now, in many parts where there used to be grass, there is nothing but bare earth, and, although we do not agree with some witnesses that there has been a decline in the annual rainfall, there is no doubt that, owing to the denudation of the soil, such rain as falls quickly runs off the hard pan which has formed, or evaporates, and is of far less benefit to the land than it was when the soil was covered with grass. To-day.

1986. Another serious factor, pointed out to us by several witnesses and corroborated by our own observation, is that areas which used to be open grass plains are now being rapidly overgrown by dense thorn bush, which absorbs the moisture and plant food at the expense of any grass which may be endeavouring to re-establish itself.

1987. Probably about 1920, the main stock areas of the native reserves had attained their optimum carrying capacity, and, although fully stocked, were not overstocked. Since then the cattle population has, according to the evidence given before the Commission by the Chief Veterinary Officer, increased to about 6,000,000, or, roughly speaking, doubled itself in the last twelve years.

1988. We have therefore, at the present moment, a preposterous state of affairs in the Colony, which can be summarized as follows: A human population of under 3,000,000 owns about 6,000,000 cattle, and probably many more sheep and goats. The large majority of that population has little or no milk for the use of themselves or their children during the dry months of the year. In many parts of the reserves, the cows do not produce sufficient milk even to feed their calves. Meat consumption is far below what would be considered the necessary requirements of the natives; and annual sales, apart from sheep and goats, to outside markets are not more than 20,000 beasts and a negligible amount of ghee.

1989. In the midst of plenty, the natives in pastoral and semi-pastoral areas are, in fact, living under conditions of extreme poverty. After paying their taxes (which they are not always able to do), money for food and clothing is practically non-existent, and will continue to be so until they turn the products and increase of their large herds of stock into some more useful and fluid kind of currency.

Real Poverty
of Pastoral
Natives.

1990. As a contrast to these conditions, we may compare them with the position in Australia. As given in the Official Year Book of the Commonwealth (No. 24), 1931, Australia, with a population of 6,476,032, has 11,202,134 head of cattle. With less than twice

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the number of cattle which there are in Kenya, Australia not only keeps more than double the inhabitants of Kenya on a far higher scale of living, but also exported in 1929-30, 157,748,655 lb. of beef; 107,663,264 lb. of butter, and 3,094,092 lb. of cheese.

**The Waste of
Valuable
Material in
Kenya.**

1991. The enormous waste of valuable material in Kenya is lamentable. For example, during a period of two or three good seasons in the Masai Reserve the cattle population will probably increase by two or three hundred thousand; a bad year ensues, and nearly the whole of that increase will die. In two months of the dry year of 1929, 50,000 hides were sold out of the Kajiado district of the Masai Reserve alone, and probably at least as many more left to rot on the veldt. Similar conditions apply to other pastoral and semi-pastoral reserves, and all the time there is a steady deterioration in the quality of the stock.

There is reason to believe that the mortality of cattle in the present drought is at least as severe as in 1929, and we quote, in Appendix 10, extracts from reports furnished by the Provincial Commissioners.

1992. We have no doubt that in the last twenty years the Kamba cattle have notably deteriorated both in size and in milk-yielding quality. The experience of the native training centre, recently established near Machakos, indicates that about 50 per cent of the heifers are considered unfit for breeding purposes when they attain maturity.

1993. There is more reliable information for us concerning the Kamba Reserve than with regard to others we have mentioned, but we see no reason to think that conditions in general are not similar throughout other pastoral reserves in the country.

**The Similarity
with Condi-
tions in South
Africa.**

1994. It may be appropriate here to quote a few extracts from the Report of the South African Economic Commission of 1932:—

Para. 69.—"The result is that we have now throughout the reserves a state of affairs in which, with few exceptions, the carrying capacity of the soil for both human beings and animals is definitely on the down grade; a state of affairs which, unless soon remedied, will within one or at the outside two decades create in the Union an appalling problem of native poverty."

Para. 71.—"To what has this led? To a state of affairs in which, with the exception of a few favoured parts, a native area can be distinguished at sight, by its bareness. Overstocking is so general in the reserves as to have become an evil of the first magnitude. Your Commissioners wish to stress the fact that unless some limit can be placed to the universal overstocking, the very existence of the large numbers of natives in the reserves will in the near future be impossible."

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Para. 72.—" In Geluks location, actual desert conditions have in twenty years been created where once good grazing existed."

Para. 73.—" Unless precautionary measures are taken against overstocking, the conditions in the Transkei and the native areas in the rest of the Union will be to-morrow what that of the Ciskei is to-day. The same causes are at work there, and they will inevitably produce the same effects in the near future—denudation, *donga*-erosion, deleterious plant succession, destruction of weeds, drying up of springs, robbing the soil of its reproductive properties; in short, the creation of desert conditions. These are strong words, and people who have not had the opportunity of seeing conditions in detail, as your Commissioners had, may perhaps consider the picture overdrawn. Your Commissioners must, however, reiterate them and continue reiterating them if they hope for success in bringing to the notice of those concerned the extreme seriousness of the evil of overstocking."

Para. 92 (part of).—" Measures for combating animal diseases have largely increased the number of cattle. Normally, this should have increased the capacity of the country for carrying population; but the natives' non-economic cattle outlook caused it to have an opposite effect. Overstocking even reduced the milk yield, in spite of a large increase in the number of cattle."

Para. 108 (part of).—" Another factor in the problem of overstocking is represented by donkeys and goats, which are very destructive of vegetation. It is most desirable that steps should be taken to limit the number of these animals in reserves."

Para. 109 (part of).—" Any scheme to deal with the problem of overstocking will have to face the question of marketing the present surplus stock. It is of no use transferring animals from one overstocked area to another. It is imperative that large numbers be slaughtered and converted to the best economic use."

Para. 116 (part of).—" The magnitude of the problem is appalling. But the problem which will present itself, if the reserves continue at their present rapid pace towards desert conditions, will be even greater and more appalling."

In fact, much of the above Commission's Report on overstocking in the native reserves of South Africa might have been written, *mutatis mutandis*, by us with regard to the reserves in Kenya.

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The Evidence
of the
Veterinary
Department
in Kenya.

The View of
Sir Daniel
Hall's
Commission.

1995. The memorandum and evidence of the Chief Veterinary Officer and Assistant Chief Veterinary Officer on the subject, to be found in the Evidence, is worthy of study.

1996. In the following extracts from the Report of the Agricultural Commission, presided over by Sir Daniel Hall, K.C.B., LL.D., F.R.S., there is evidence of what so distinguished an authority thought of the conditions prevailing in Kenya in 1929 :—

Para. 117.—"Of the native live stock, the goats constitute probably the greatest danger. They not only graze closer but they attack shrubs and young trees on the higher land, and so destroy the scrub and forest which should regulate the retention of water by the soil and prevent the starting of dangerous erosion. It will be remembered that to the goat more than anything else may be attributed the deforestation of Greece and other Mediterranean districts, where the former soil has been completely washed away, creating on the one hand a bare hillside, and on the other swamps in the valleys."

Para. 118.—"This process is going on in Kenya, and will in the end deprive the native peoples of much of their means of sustenance. It is necessary to take in hand at once the reduction in the numbers of live stock kept by the natives. Though the ultimate solution can only be obtained by the education of the native to treat his live stock as a means of producing food, it will in some cases be necessary to apply immediate compulsion to get the natives to part with the stock that are in excess of what the land will carry. The conditions are not the same in all the native reserves, and the Commission proposes to treat them separately."

Para. 121 (part of; re Ukamba).—"It is not too much to say that a desert has already been created where grazing formerly was good, and where even cultivation existed, and that the same desert conditions are steadily approaching the land at present carrying stock and cultivation. The droughts of the past two seasons have intensified the rate of destruction and are causing great disturbance in the tribe."

Overstocking
may yet be
remedied.

1998. We believe that Kenya is fortunate to the extent that overstocking is of comparatively recent growth, and we do not consider the damage already done to be irreparable.

This fact is perhaps one of the strongest arguments which can be found in favour of prompt action, while the evil is still capable of being remedied.

But the
Problem is
Grave and
Urgent.

1999. In making the foregoing quotations, we wish to reinforce our own strong conclusions that the problem of overstocking is grave and urgent, and that unless immediate and decisive steps are taken

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to combat this ever-increasing evil, many of the native reserves will be irretrievably ruined and their inhabitants reduced to a state bordering on starvation. The process of denudation and destruction, once started, continues at an ever-increasing rate as the stock multiply at compound interest, and the longer firm action is delayed the greater will be the difficulty and expense of restoring the country to prosperity.

2000. But there is another side to the picture which we prefer to envisage. The native reserves of Kenya contain some of the finest dairying land in the world, and should be capable, not only of providing ample supplies of meat and milk for their inhabitants, but also of exporting large quantities of dairy produce. This would add not only to their own wealth but also to the wealth of the Colony of which they are a part. The potential working capital for the development of these estates is present in the shape of surplus stock and the annual increase. If these estates were properly developed, and the revenue, or part of it, accruing from the disposal of surplus stock applied to their betterment in the shape of better water supply, fencing, dipping, and all the other improvements with which the intelligent European farmer develops his land, the future of these reserves is indeed bright. The lands would then carry even more stock than they do now, and of a better quality, producing wealth for the native inhabitants.

If solved, the
Natives and
the Colony
will be
Wealthy.

2001. The disastrous losses from drought which now occur periodically would be memories of the past; the pastoral natives would then have money which he now lacks with which to buy grain from his agricultural kinsman, who, in his turn, would be able to obtain cheap animal fertilizer products for the renovation and conservation of his lands. All this would promote the free circulation of money in and between reserves and encourage the development of the subsidiary industries which are at present so badly needed; and the Government, as trustees, could feel that they were carrying out their trust, not only as now in the letter, but in the true spirit of honest guardians.

2002. In view of the remarks which here follow, and lest anyone should construe them as in any way reflecting on the officers responsible for the administration of the native reserves, we desire to pay tribute to the work which they have done, and are doing, for the betterment of the native and his land. They have been handicapped by the novelty and strangeness of the conditions in a new and rapidly developing country and by the absence of funds. The exigencies of the Service often demand the transference of an officer from a district inhabited by one tribe, with its own peculiar

What
Administrative
Officers have
done.

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problems and language, to another with entirely different customs and language, before he has had a chance of learning the problems of the people.

2003. Since the Great War, it has been difficult for Government to lay down a steady, continuous policy of development for the native reserves. In all the circumstances, it is remarkable that any progress has been made, and the credit for what has been done must largely go to the District Officers who have displayed such untiring devotion and ability and to the agricultural and technical staff who have assisted and advised them.

Need for a
Definite Policy
of Destocking.

2004. Unless, however, in a matter which so closely affects the native as destocking, a clear and definite policy is laid down by headquarters, and an officer can be assured of the fullest support and sympathy in what will be at first a thankless and most difficult task, there may be a natural inclination to minimize the evil, in the hopes that matters may last out his time, and *Après moi le déluge*. Realizing this, we record our opinion that any policy of destocking should be one laid down by Government on comprehensive lines, and must have as its main consideration the fact that there is a definite relation between the area of the land and the stock which it can support. Unless this relationship is constantly borne in mind, and the principle adhered to, even further deterioration of both the land and the quality of the stock is inevitable.

It will at first
be unpopular.

2005. In a country such as Kenya, where the native looks on his stock as currency, and not as a productive asset, and where mere numbers count far more than quality, where, in fact, the question of stock is interwoven in every direction with the native habits and customs, the solution of the problem is indeed difficult. Radical and drastic attacks on deep-rooted customs are repugnant to the general principles of British Administration, and may even lead to unrest and resentment among the natives concerned.

Its Urgency
has been
frequently
pressed on
Government.

2006. We would point out that the urgency of action against overstocking has been pressed on Government for many years. A Committee to inquire into the disposal of surplus live stock and hides and skins was appointed in 1927. Sir Daniel Hall's Agricultural Commission, which reported in 1929, laid great stress on the seriousness of overstocking in native reserves, especially the Kamba Reserve, and made recommendations. The Crop Production and Live Stock Ordinance was put on the Statute Book in 1926. For various reasons, this Ordinance has not been put into operation, except in minor details, and no effective action has been taken to implement the reports just mentioned.

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2007. As we have already stated, we are fully alive to the difficulties of the situation caused by the deep-rooted native conception of stock as the only source of wealth, bound up as it is with the religious significance which is attached to them.

Our
Appreciation
of the
Difficulties.

2008. We also fully appreciate how much better it would be if the natives could be made to understand the necessity for de-stocking, and if the Government could get their support for such a policy.

2009. It has been urged that the only course in this connexion is to wait until, by a process of education, the natives' consent has been won; but we are convinced that, except possibly in the case of one of the more advanced tribes, such consent would not be obtained for many years, and probably not for one or two generations, by which time the progressive ruination of pasture lands and deterioration in the quality of the stock would have reached such a stage that any action would come too late.

2010. The fact that large numbers of native cattle are the subject of trusts, whereunder several persons have an interest in each beast, in itself precludes the possibility for years to come of obtaining consent to the culling of stock. It is, in our opinion, a mistaken kindness to await the time when the almost inevitable recurrence of drought and pestilence will take its toll of hundreds of thousands of animals and so bring a temporary respite to the over-grazed pastures, only to be followed again by dreary cycles of overstocking and epidemics of disease.

2011. We therefore recommend, with all the emphasis at our command, that action be taken with the least possible delay to inaugurate the culling of surplus stock and to pursue unremittingly a policy of controlling the cattle population within the limits which the grazing facilities available from time to time dictate.

The Urgency
for Action.

2012. We should make no such recommendation if we were not satisfied that, in spite of all the difficulties, such a course is practicable. This opinion is already shared by several of the senior administrative officers upon whom will fall the burden of seeing that the task is carried out. They realize that such measures will not be popular, and may cause strained relations between the Administration and the natives, but they feel that no other course is justified, and, as one of them has stated, whenever droughts occur and steps have to be taken to confine the cattle within the boundaries set to the tribes, a similar situation already arises and will continue to arise, but carries with it no amelioration of the position.

The
Practicability
of the
Proposals.

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2013. Before setting out our proposals, which follow in broad outline those which have already been made in the Reports to which we have alluded, there are one or two further points which we wish to emphasize. There is no stage of the operations recommended at which the food supplies of the pastoral tribes will be detrimentally affected. They will throughout have adequate supplies of meat and blood, and the milk available will never be diminished but will be progressively augmented. The amount of stock available for a marriage transaction will for the time being be less, but will always be greatly in excess of that which they had in the early days of the century, and will later increase by degrees until it exceeds the present amount. From the beginning their actual material position will be improved, even though they receive only four or five shillings for each beast which is culled.

Proposals for
Amelioration.
Demonstration

2014. We now turn to the proposals which we have to make for remedying the present dangerous situation.

2015. We consider generally that the mere addition of more land to the reserves would do little to solve the problem, though in certain cases some additions are necessary upon economic grounds and in order that reconditioning of the devastated areas may be undertaken. The ideal to be aimed at is to educate the natives in better methods of animal husbandry, in the economic use of their land and stock, and to bring home to them by every possible means the calamitous results of overstocking, both in their own interests and those of the country at large.

2016. Although such education has not been neglected, we recommend that it be pressed forward persistently, widely and more intensively than hitherto. We think that a great deal can be done by teaching and demonstration at the veterinary training centres (which have, so far, in our opinion, given insufficient attention to the question of overstocking), by boundary fencing, bush fencing, paddocking, resting of grazing grounds, reconditioning, and the development of such systems as the *kisesc* amongst the Kanba. We believe also that much can be accomplished by administrative officers working through the Local Native Councils and tribal authorities, by agricultural officers, veterinary officers, and even by the Education Department. The natives must learn to limit the numbers of their stock to the carrying capacity of the land, and at the same time improve the land and the quality of their cattle. Communal grazing, with its resultant inequalities, should be controlled, and the system gradually superseded by one of private tenure. Efforts should also be made to change the superstitious and religious outlook of the natives towards their stock, and to persuade them to regard them more as an economic

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asset. The establishment of meat markets and butcheries should be fostered with a view to encouraging natives to include meat as an ordinary article of their diet.

2017. But, as we have clearly said, and as has been so strongly emphasized in the Report of the South African Economic Commission of 1930-32, it is a race against time, and we are of opinion that the above methods of themselves cannot take effect in time to prevent the irreparable destruction of large areas of grazing land, except possibly among one or two of the more progressive tribes, such as the Kamba of Machakos District. Other and more direct methods must, we consider, also be carried out concurrently with that of education in the proper management of live stock.

2018. The prevalence of tsetse-fly, carrying trypanosomiasis in cattle over large areas of many of the native reserves, is an important factor in connexion with overstocking. Such areas contain much valuable grazing land (as well as agricultural land) which cannot be used for depasturing cattle, while there is over-concentration of stock in other parts of the reserves.

Bush
Clearing.

2019. Bush clearing for the eradication of fly would do much to ease the overstocking problem, would render available further extensive areas of grazing, and so enable other parts of the reserves to be rested.

2020. We recommend that an extensive campaign for the clearing of the fly-infested areas be undertaken, and that the measures, which, we understand, have met with considerable success in Tanganyika Territory, be studied.

2021. Bush clearing, apart from the question of "fly", is also most necessary in many of the reserves in order to improve and increase the available grazing. We have seen that thorn scrub is rapidly spreading over many areas which were a few years previously open grassy plains, but which are now practically devoid of grass and useless for depasturing cattle. Figures quoted in Appendix No. 11 show that very substantial results could be obtained even by a comparatively small labour force, if the effort is conducted and organized.

2022. For many years past, the Veterinary Department has mainly devoted itself to the question of the eradication of stock diseases, and a corollary of this has been the imposition of quarantine restrictions. Most of the native reserves have been kept in almost perpetual quarantine; the sale of cattle outside such reserves has been very much restricted, and the overstocking problem has, in consequence, been accentuated. It is futile to tell the natives that they have too many cattle for the land and at the same time prohibit or hamper movement to the markets.

Quarantine
and Stock
Routes.

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2023. In the above connexion, we would quote the following extract (para. 84) from the Report of the Kenya Agricultural Commission, 1929 :—

“ The Commission, however, doubts whether the quarantine regulations have been successful or even can be properly enforced, having regard to the presence of native-owned cattle in close proximity to European settlements. Meantime, it is undoubted that the restriction of movement does impose a grave handicap upon the progress of the stock industry. Many competent witnesses have maintained to the Commission that they would be better able to prosecute their business if the quarantine regulations were abolished. They consider that they would run no more risks of disease, whereas they would be able to obtain and to sell cattle on better terms.

“ The Commission recommends that the quarantine regulations should receive consideration, in which the needs of the industry for freer movement and more markets should receive careful attention. In particular, the Commission considers that the provision of stock roads, whereby the settlers could obtain breeding cattle from, for example, the Northern Frontier, should be facilitated.”

2024. We have no information as to the measures taken to implement the above recommendations, but the fact remains that most of the native reserves are still in quarantine for cattle, and no provision appears to have been made for stock roads.

2025. In our opinion, it is most necessary to permit of freer movement of cattle from the native reserves, and to provide stock routes in order to facilitate such movement.

Stock Tax.

2026. The imposition of a stock tax has much to recommend it, and has the support of so eminent an authority as Lord Moyne, though he regarded it more from the point of view of taxation than from that of overstocking. But the absence of markets for the large number of cattle which would have to be sold to realize that tax has hitherto precluded its introduction, and, even if sufficient markets were available, several factors militate against its success under present conditions. We have had evidence from experienced European stock farmers of the difficulties of accurately counting even comparatively small numbers of cattle, and when several millions are involved the difficulties become very great indeed. Constant movement in search of grazing, and the native method of keeping his stock in several different places, often widely separated, are other factors against accurate assessment. We think also that the native would generally prefer to sell a small number of his best

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stock at a good price than a large number of inferior stock at a poor price, and so its effect on the overstocking problem might be negligible.

2027. We would not, however, rule out the consideration of a stock tax in the near future, and we consider that it will be possible to introduce it in the not very remote future, but it would not be imposed directly to deal with the overstocking problem and would be payable in cash. We have advocated a system of culling in the following paragraph, but we think that the time is not very far distant when it may be superseded by a stock tax. While therefore we are doubtful of the practicability of a stock tax or its adequacy in solving the overstocking problem under present conditions, we would recommend consideration of its introduction as early as possible. We would further recommend, should it be imposed, that the revenue derived from it be employed for the benefit of the natives.

2028. The Crop Production and Live Stock Ordinance was introduced in 1926, but has never been put into force as regards live stock. It provides for the defining or limiting of the number, kind, ages and sexes of the live stock to be carried on any area; for promoting the improvement of the quality of the live stock; and for the disposal of surplus and undesirable live stock. **Culling.**

2029. We are of opinion that the Ordinance is an excellent one, and would recommend its application, in the first instance, on educational lines, as soon as the necessary markets for meat, blood and bone products, etc., which will be discussed in a later paragraph, are available.

2030. We consider that the Ordinance should be applied gradually, and be employed primarily in the areas in which devastation is taking place most rapidly and where purely educational methods are likely to be slow in their effect and unlikely to prevent irreparable damage to the land within a short period.

2031. In the first year or two therefore, we recommend that culling under the Ordinance be limited to all lame, blind, worn out, decrepit animals of little or no value as food or incapable of breeding or yielding milk. We realize that this would, in the initial stage, not materially reduce the number of stock, but might, possibly, have the opposite effect. In succeeding years, however, culling should become progressively more severe, and be applied to all redundant male animals and generally uneconomic beasts. The natives should be given the opportunity of selling in a meat market or of slaughtering and eating any animals which it is decided to cull, but should they be unwilling to do so, or the numbers render

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this prohibitive, the responsible officer should kill the animals himself, or through agents, if their condition renders this course desirable, or remove them to the nearest market or fertilizer factory. In the latter case, the owner would be paid the estimated value of the animal, either in cash or by means of a ticket redeemable at the District Commissioner's office. We would suggest that, if possible, an arrangement should be made with the natives that a percentage of the price paid for all animals should be credited to the Native Betterment Fund, or to a fund for reconditioning, paddocking, fencing and general improvements in the relative reserves.

Fertilizer
Factory.

2032. It is clear that, even with the moderate degree of culling proposed in the initial stages, the total number of stock to be slaughtered would be very considerable. The number of native cattle has been estimated by the Chief Veterinary Officer at six million head, and we do not think that this is very wide of the mark. Assuming that culling measures were applied to half this number to the extent of $7\frac{1}{2}$ per cent of them (a very moderate figure), it would mean that 225,000 a year would have to be slaughtered, and many of them would be unsaleable or unfit for human consumption. This brings us to the question of a fertilizer factory for the preparation of blood and bone meal, subsidiary activities such as curing and tanning hides, and, if possible, the sale of fresh or dried meat. With an improvement in the world's economic conditions, the preparation of meat extract for export might also be considered.

2033. We wish to emphasize that, in our opinion, fertilizer factories must be an essential corollary of any measures taken to deal with the overstocking problem, and in this connexion would quote the following extract (paragraph 126) from the Report of the Agricultural Commission, 1929 :—

“ Before such action can be taken, one preliminary step is essential: A meat factory must be established, preferably at some point on the Railway, with water facilities, to take over the stock to be culled. At the outset, it is improbable that this factory can be a paying proposition. The live stock that will be culled are of such poor quality and in so low a condition that little saleable meat can be obtained. Moreover, it is stated that ‘measles’ is so prevalent amongst the Kamba stock that a considerable proportion of the meat would be unsaleable.

“ The factory will therefore have to convert the greater part of its purchases into meat extract, fertilizer and hides. From the evidence the Commission has received, it is improbable that the factory would be able to pay for the cattle at the value the native places upon them. The Mkamba considers, as

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the native witness stated, that all cattle are of equal worth, and, if he has to rate them as money, he is disposed to regard even the worst starveling as worth the kind of price he knows is being given for working oxen or beef cattle."

2034. We prefer to recommend a fertilizer factory, as indicated in the preceding paragraph, and see no reason why it should not be a paying proposition. In the first place, the price paid for an animal would have to be based on its economic value, and would probably amount to a few shillings only. Secondly, there would certainly be a large and increasing demand for fertilizer products, which are now imported to the amount of some 2,500 tons annually, and thirdly, the preparation of hides for export should be a profitable undertaking, while incidentally benefiting that industry.

2035. While therefore we think no loss should be incurred, we consider that, if it were, a State subsidy would be amply justified in the circumstances; as has been stated, the question is not whether the country can afford to have a meat factory, but whether it can afford to be without one. On the other hand, it is essential that the interests of the producer should be protected and that he should be paid as good a price for his stock as possible. This price in our opinion should depend on the prices realized for fertilizers, which would have to be fixed at such rates as would enable them to secure the whole of the East African market for these types of fertilizer.

2036. We recommend something in the nature of a public utility company, over which the State would exercise a considerable measure of control, and that a certain percentage of the profits be credited to the Native Betterment Fund and earmarked exclusively for the improvement and development of the pastoral areas. Every facility should be given to such a company, but if none can be induced to establish and operate the necessary factory or factories, then we consider Government itself must step into the breach.

2037. In the opinion of many witnesses, the damage caused to the grazing areas by excessive numbers of sheep and goats, with consequent denudation and soil erosion, is greater even than that caused by cattle, and with that opinion we are inclined to agree. The problem, however, is a more difficult one, as there would probably not be a market for the large numbers it would be necessary to cull, and their value to a fertilizer factory would be very small. A tax would be difficult, if not impossible, to assess or enforce, and would be strongly resented by the natives. Sheep and goats are, moreover, very necessary as a food supply to the natives, and in many areas they do little damage and are the only live stock

Sheep and
Goats.

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which thrives. Culling may be necessary in certain locations, but generally we would recommend that steps be taken to confine them to certain areas, where they are unlikely to cause serious damage.

2038. The evidence of Mr. T. J. O'Shea, a member of Legislative Council, on the subject of squatters and their stock is of interest and worthy of careful study. He has reason to believe there are something like a quarter of a million of native cattle on European farms in the Nzoia Province alone, and there are probably at least that number of sheep and goats. The Resident Native Labourers Ordinance, so far as stock is concerned, appears to be a dead letter; the numbers kept on the farms are out of all proportion to the requirements of the natives; a system of "kaffir farming" is prevalent, and the abuse, as Mr. O'Shea has said, far outweighs any possible benefit. We are in complete agreement with the views expressed by him, and recommend that a strict limitation of the number of stock which resident labourers are allowed to have on the farms should be imposed.

Squatters.

2039. We fully realize that the return *en masse* of all the excess squatter stock to the reserves would seriously increase the overstocking problem in them and embarrass the Administration, but a policy of limiting the numbers on the farms to the economic requirements of the natives should gradually and steadily be pursued concurrently with that of reducing the numbers of uneconomic stock in the reserves themselves. We do not consider it is a matter which should be left entirely to local opinion.

Proposed
Committee on
the Over-
stocking
Question.

2040. The measures which are necessary and desirable to combat the evil of overstocking by natives are so many and so varied that we have confined ourselves to certain recommendations on broad lines, and would advise that a Committee be appointed to consider the matter further and in greater detail than we have found possible in our Report.

Summary.

In brief, our proposals and recommendations are as follows :—

- (a) That education and propaganda in the economic use of land and stock in the native reserves be pressed forward as widely and intensively as possible.
- (b) That measures be taken to correlate the stock to the available grazing in the native areas.
- (c) That the question of allowing freer movement of stock by relaxation of the quarantine regulations, and the provision of stock routes, be investigated.
- (d) That the imposition of a stock tax as early as circumstances permit be considered.

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- (e) That the principle of compulsion in reducing the numbers of stock in areas in which the land is being devastated by overstocking be accepted, and that the provisions of the Crop Production and Live Stock Ordinance be put into force in those areas as soon as practicable.
 - (f) That immediate steps be taken for the establishment of fertilizer factories, either by a public utility company or directly by Government, in such places as are deemed to be necessary.
 - (g) That regulations be made to control the grazing of sheep and goats, and restrict them to certain areas in which they are unlikely to cause serious damage to the land.
 - (h) That steps be taken to limit the numbers of squatter stock to the actual requirements of the resident labourers
 - (i) That a Committee be appointed to consider the matter in detail.
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CHAPTER XI.

THE FINANCIAL ASPECT OF OUR RECOMMENDATIONS.

**Main Items of
Expenditure.**

2041. Our recommendations, if carried into effect, will involve considerable expenditure, which falls under the following heads :—

(a) *Direct*, of which the following are some of the main items :—

- (1) The purchase of alienated land.
- (2) Compensation to natives in respect of their rights under section 86 of the Crown Lands Ordinance, 1915.
- (3) Compensation to detribalized natives in respect of their proposed removal from certain localities in which they are at present resident.
- (4) Compensation to certain Dorobo in respect of their proposed removal.
- (5) Compensation to the Nandi tribe in respect of certain stand premia which were waived in Kipkarren and Kaimosi.
- (6) The fencing of Chematum salt-lick.
- (7) The upkeep of the supply furrow to the Morania furrow in Meru.
- (8) Leasing of certain farms for the Kamasia.
- (9) Rent in respect of the King's African Rifles lines at Meru.
- (10) The re-creation of the office of Recorder of Titles at the Coast.

The approximate estimate of the total under these heads is shown in Appendix No. 13, and amounts to £36,000 for capital costs, inclusive of ten years' estimated rent under item 8. Nearly £11,500 of the capital amount represents compensation in respect of the removal of natives from Tigoni, Kithirioni, Pangani, and the land occupied by the Mau and Tinet Dorobo, and for the partial evacuation of the settlement at Kibira. The land so evacuated will be an asset in the hands of Government, the disposal of which should more than cover the financial costs of the compensation.

The figure for recurrent costs under items (6), (7), (9) and (10) is estimated at £1,300.

The contingency that at the end of ten years it may become necessary to renew the lease of the Kamasia farms is not taken into account in the above estimate.

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An incidental cost not included in the estimate is the cost of surveying the boundaries of additions to the reserves and of C Areas, but in our opinion a rough demarcation by administrative officers should generally be all that is necessary, except possibly in parts of Kikuyu.

(b) *Indirect*.—Loss of potential revenue (stand premia and rent) caused by setting aside further areas for native reserves in lieu of opening such land for settlement.

2042. The practicability of these recommendations must depend to some degree on questions of finance; therefore we make the following suggestions as to how money for these projects may be found and how the cost should be borne.

2043. The Kenya Missionary Council, in their memorandum, has stated: "The real responsibility for the errors of the past lies with the Imperial Government, and while many of these errors were committed without any wrong intent, but through ignorance and lack of staff and resources, yet a definite obligation of honour lies upon the Imperial Government to endeavour in every possible way to secure either a restitution of alienated land, or, where this is too difficult or costly, a granting of other land, or of adequate monetary compensation for the injustices done in the past. It would be unfair to lay the whole burden of this on the local Government, which would mean that the cost would be borne by native and non-native alike, and that this generation would have to pay for the faults of the past. The local officials were the servants of the Imperial Government, and that Government should itself shoulder the responsibility and make proper reparation in every proved case."

Responsibility
of Imperial
Government.

2044. While not endorsing the whole of this criticism of what has been done, we think that there is considerable force in the main argument, especially when it is true that many of the purchases and payments which we have recommended are occasioned in the main by acts of the Government at a time when the Imperial Government was directly controlling the finances of the country, and when local non-official opinion was little, if at all, represented in the local Government, and that, inasmuch as the need for this expenditure was not recognized when it took over control of the finances, they constituted an undisclosed liability on the Government. We therefore trust that this view of the matter will be given full weight and that the Imperial Government will assist in the provision of the funds necessary to implement these particular recommendations and the cost of this Commission, leaving the local Government to make good the balance and the loss of potential revenue due to the proposals for additions to the reserves.

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**Counter-
balancing
Advantages.**

2045. As a set-off to the expenditure caused by the appointment of our Commission and our recommendations, we consider that if the policy we have outlined in connexion with the proper use of the land by the natives and markets for their surplus stock be carried out, their prosperity and that of the country generally will be greatly enhanced, with a consequent improvement in Government revenue.

**Fertilizer
Factory.**

2046. We recommend that every encouragement should be given to a company or companies to establish and operate fertilizer factories which would obviate the necessity of capital having to be found by the Government.

But if this be found impracticable, or if it be considered that such factories should be a Government concern, the finding of the necessary capital would then devolve on Government.

**Development
Expenditure.**

2047. We have throughout our Report laid stress on the necessity for the proper utilization of land in the native reserves, and have made recommendations with regard to the need of the improvement of water supplies, fencing, combating of soil erosion, the elimination of tsetse-fly, and the reconditioning and conserving of land, all of which will involve capital and recurrent expenditure which are not included in section 2041 above.

**Money owing
to Carriers of
the Military
Labour Corps.**

2048. We consider that much of the early expenditure could be properly met by the allocation to these purposes of the sum of nearly £50,000 which is owing by the Imperial Exchequer in respect of unclaimed balances of pay due to native carriers of the Military Labour Corps, who died or disappeared while employed in the campaign against German East Africa.

2049. The payment of the debt has repeatedly been urged by successive Secretaries of State for the Colonies for a period of twelve years, but has been refused by the War Office and the Treasury.

2050. The whole position is reviewed at length in Despatch, Kenya, No. 83, of the 7th February, 1931, from the Acting Governor of Kenya to the Secretary of State for the Colonies, which is emphatically endorsed in Despatch, Uganda Protectorate, No. 148 of the 16th May, 1931, from the Governor of Uganda. We shall endeavour to state the position, as it appears to us, as shortly as possible.

2051. At the outbreak of the Great War, forces had to be raised for the defence of Kenya against attacks from German East Africa, and the necessary transport had to be improvised by the enrolment of native porters.

2052. There were neither the men nor the time to provide a proper organization for registering the men enrolled; it was vital

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that the porters should be obtained and sent off without delay. The tribal authorities were ordered to furnish quotas of porters, who were were obliged to serve.

2053. In such circumstances, no adequate system for the future identification of each individual was possible; moreover, not only were there bound to be many cases of men serving under the same name, but in several tribes a man may not by tribal custom mention his birth-name.

2054. A similar course was followed until later in the War, when Lieut.-Colonel Watkins, who was appointed to command the Military Labour Corps, evolved a system of registration.

2055. The consequence has been that of a total of over 400,000 natives of Eastern Africa who passed through the books of that Corps, some 39,000 are still untraced, as their relatives have not been able to identify the names under which they served, and were of course in most cases ignorant of the numbers under which the particular individuals were enrolled.

2056. In 1918, an Ordinance was passed in Kenya with the approval (except in one particular) of the General Headquarters for the East African Campaign, providing, *inter alia*, that any unclaimed money belonging to a native of the Military Labour Corps which remained undisposed of should be made over for the benefit of the tribe to which the native belonged. Owing to inadvertence, this Ordinance was not submitted to the War Office, and in 1920 it was repudiated by it on the ground that it was *ultra vires* for the local Legislature to legislate regarding the disposal of Imperial Funds; this provision of the law had therefore to be repealed.

2057. In the early days of the war in East Africa there was, of necessity, no adequate system of identification, and His Majesty's Government was relieved from incurring the expenditure which such an organization would have necessitated. The War Office later refused to incur expenditure in appointing a special military staff to investigate the circumstances in which so many natives had sums outstanding to their credit, to find them or their heirs, and to pay the sums due. As a result of saving money under these two heads, the War Office finds itself entitled to retain the money which had been actually earned by porters, and which should have been paid to them or their heirs.

2058. There are three factors of importance in the consideration of the question to which we can find no reference in the records dealing with the matter, and to which we wish to invite attention.

2059. The first is that throughout the war the natives were in the legal position of "protected foreigners", and that they were compelled to serve in a war which was in no way caused through

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their action or by local misunderstandings, but which was due to European dissensions with which they were not concerned, and in which they had to take part to help in protecting their own protectors.

2060. Secondly, however much it might be argued that in the early part of the war the natives were helping to protect their own country from invasion, this argument could not be said to apply to the later stages of the war, which took place in German East Africa in furtherance of Imperial policy; and it was during that part of the war that the great bulk of the porters were called upon to serve at the risk of their lives; no such numbers would have been necessary for the mere defence of Kenya, whose natives have no share or profit in the territory which has been acquired.

2061. Thirdly, in support of the payment of unclaimed balances of pay being handed over for the benefit of the tribe to which the individual porter belonged, the analogy of the Regimental Debts Act of 1893 has been invoked. Under that Act, arrears of pay are applied towards the creation of compassionate funds for the benefit of widows or children of soldiers dying on service, etc.; it would thus appear that it is felt that special consideration should be given in respect of such matters to the section of the community to which the soldier belongs in preference to the interests of the general body of taxpayers, although that section forms a part of the same community and would have *pro tanto* benefited if the money due had been retained in the national purse. But when money has been earned, in fighting the battles of another people, by natives of tribes in obedience to the orders of their tribal chiefs, the claims of those tribes that the money earned by their tribesmen, who are dead or missing, should be received by them, instead of going to the benefit of an exchequer in which they have no share, would seem to be very much stronger than in the case from which the analogy is taken.

2062. The tribes of Kenya have suffered a grievous loss of men, and it would be but bare justice that they should receive the money these men have earned in obedience to their chiefs.

2063. The subject is one on which all sections of the community in Kenya are agreed, whether they be the Government, settlers, missionaries, officials, Indians or natives, who all alike feel that a grave injustice would be done if this claim were not fully met.

2064. Mr. Amery, when Secretary of State for the Colonies, described it as a debt of honour, and we feel confident that the British Parliament, as representing the nation, will not accept such a sacrifice forced upon the natives on the technical financial grounds

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which the War Office and the Treasury have felt it their duty to urge on behalf of the British taxpayer, who has been served so generously and loyally by the native tribes of Kenya.

2065. The War Office, while apparently admitting that this money is due to dead and missing porters, contended that in no case was the full sum payable, as from it would have to be deducted money which had been overpaid to other porters and the pay of porters who had deserted. To what extent such overpayments or desertions existed it would be impossible to prove, but in any event it is most improbable that the sums which would be an offset could amount to the interest which would have been earned on the sum due (subject to such deductions) if it had been credited to the native tribes when it should have been paid, some twelve years ago; the British Treasury has in effect had the use of the money during that period.

2066. The position then, as it appears to us in relation to Kenya, is that the compulsory labour of thousands of natives has been utilized by the British Government in the main for the benefit of the Empire, and that the pay earned by thousands of those who died or who were missing in the war has hitherto been retained by the British Government for its own use, and withheld from the relatives and fellow tribesmen of these men, mainly because the British Government were saved expenditure in establishing a proper system of registration or of instituting inquiries to ascertain their heirs and next-of-kin.

2067. The benefits of the work of these men are being enjoyed by the British Government, and the losses have all fallen on the tribes who sent their fellow tribesmen to the war by order of the tribal authorities.

2068. We consider that if such treatment were meted out it would constitute a much more callous violation of the principles of trusteeship to the natives than any of the injuries which the natives have suffered by the alienation of their land, which, as we have found, were due to ignorance of their needs and of their land tenure systems, and were inflicted with a complete absence of any conscious purpose of depriving them of what was their due.

2069. As regards the main expenditure required for the improvement of pastoral areas, we are of opinion that this might be met by the allocation of a proportion of the revenue of the fertilizer factories for the purpose, but we recognize that this would necessitate a very low price indeed being paid by these factories for the cattle dealt with by them. An alternative to this proposal would be a special levy on pastoral tribes, the proceeds of which would be entirely expended in carrying out this policy, or, if a stock tax

Funds for the
Improvement
of Pastoral
Areas.

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PART III—CHAPTER XI]

**Communal
Labour in
Reserves.**

were found to be the most practicable proposition, a proportion thereof might be devoted to the purpose. We are satisfied that, whichever of these alternatives be finally adopted, if the money be wisely spent, the position of the pastoral natives and of the country generally will be very materially improved.

2070. Much of the work required for the reconditioning of pasture land, the reclamation of fly areas by the cutting down of bush, for the drainage of swamps and construction of dams, in fact for any such work which would be of direct benefit to the natives themselves, should, in our opinion, be carried out by means of communal labour, especially where the land is communally held, thus saving considerable expenditure.

2071. There are hundreds of square miles in reserves where stock are frequently on the verge of starvation for lack of grazing, which are covered with bush and which if cleared would become excellent pasture land.

2072. In these reserves the natives complain of the lack of land for grazing, and ask for more, whereas they have that land in their present reserve if they would only clear the bush. Their able-bodied youths and men live for the most part a life of idleness and are prevented by Government from indulging in their main form of manly exercise—raiding and fighting; they are unlikely for years to come to appreciate how they could improve their position as stockowners by work of this kind; so that it is unlikely that their Local Native Councils will pass such resolutions as have been passed in other districts, as mentioned by Lord Moyne in paragraph 90 of his Report with regard to normal civic obligations. It would, moreover, seem doubtful whether such work would come under the provisions of Article 2 (d) of the International Convention concerning forced and compulsory labour, unless and until “a case of emergency” arises; in our opinion, calamity is ultimately threatened by these increasing invasions of insect (fly) and vegetable pests (increase of bush), but cases of emergency in this connexion would never arise if such work could be ordered to be done.

2073. It seems that the natives in these areas, owing to the decrees of European Governments, directed towards the prevention of compulsory labour by natives for others, are likely to find themselves in that unfortunate position described by the Prince of Wales in a recent speech: “It is hard enough to be out of a job, but it is far worse not to be fit enough through enforced idleness to take up a job when given the opportunity.”

It is true that in this case the lack of a job and the enforced idleness is in part due to the disinclination of such natives to work, and it is submitted that it is to their undoubted moral and

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physical interests that they should be required, for a few months in each year, under proper safeguards, to do work for their own material benefit, rather than that they should be permitted to degenerate, as they undoubtedly will, if they are permitted to live a life of idleness.

We suggest that if the words "in cases of emergency" in the above-mentioned Article are held to prevent reclamation work of this kind, steps be taken to delete them, and that the scope of the Article might with advantage be somewhat widened to embrace other work for the benefit of the natives themselves.

2074. The above remarks apply not only to the pastoral, but also to some extent to some of the semi-pastoral and agricultural tribes.

That such a course would have real results in increasing the land available for native use may be gathered from Appendix 11, in which it is shown that a thousand natives, working for a year under supervision, should be able to clear 50,000 acres of land.

CHAPTER XII.

SUMMARY OF RECOMMENDATIONS.

**Purpose of the
Chapter.**

2075. We shall conclude our Report by a brief survey of the problems referred to us and the manner in which we have attempted to deal with them. Although the chapter will contain a summary of our conclusions, we wish to be concise, even at some sacrifice of accuracy. In the course of the Report it has sometimes been necessary to discuss minor, but difficult, problems in meticulous detail, while relatively more important problems have occupied less space. A survey of the kind which we now contemplate may be of assistance in restoring a proper perspective and enabling the recommendations to be regarded as a whole. But we take the precaution of stating that the very much abbreviated version which will be given of the recommendations in summary form must not be accepted as anything but a description in outline, and in no way qualifies the authentic recommendations which appear in the body of the Report.

**The Terms of
Reference.**

2076. It is clear, both from the terms of reference and otherwise, that your Commission was appointed with two principal objects in view : that we should make recommendations for satisfying the needs of natives in respect of land, and that we should propose a settlement for certain doubtful questions of right.

The first, and perhaps the most difficult, question to which we directed our attention was how we should deal with the first term of reference, in which we were asked to "consider the needs of the native population, present and prospective, in respect of land". On what basis should we determine future needs?

**The Future
Needs of
Tribes.**

2077. It will be appreciated that there has been great difficulty in determining what land is necessary for the future needs of native tribes. If a population is increasing it is hard to set any limit to the land which it may ultimately need. At the present stage of development the natives have, for the most part, to be regarded tribally, and it is necessary that land should be reserved to each tribe sufficient for its needs in the present and the near future. But beyond that point the necessity is not so much that land should be reserved as that there should be a facility by which tribes or individuals could obtain more land, if it is needed. We cannot look forward into the future to the extent of saying that this or that tribe will be most in need of land or even say how long natives will wish to hold land tribally or live in tribal conditions. The greatest disservice we could do to the country would be to compromise

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PART III—CHAPTER XII]

future development by locking up rigidly in tribal compartments land not yet required by the tribes, because we apprehend that at some uncertain date in the future it might be required.

Regarded in that light the problem became simpler: it was a question of planning a land system which would admit of a reasonable elasticity, while at the same time giving all necessary security; tribes must be given enough land for their present and near future requirements and their claims of right must be satisfied; besides this there must be facilities for expansion either by the acquisition of more land tribally or by individuals or families leaving the tribal territory and leasing land elsewhere; or by interpenetration, inter-tribal leases, or otherwise.

2078. With these considerations in mind we made a preliminary classification of native areas. Our first class of land, which we called Class A, was to comprise the present native reserves together with the additions to be made on grounds of right. These we recommend to be "Native Lands".

Classification
of Native
Areas.

Our second class of land was to comprise the land which we should recommend to be added on economic grounds. These we decided to call Class B1, or "Native Reserves", if the need to be fulfilled appeared to be of an enduring character, and Class B2, or "Temporary Native Reserves", if the need appeared to be of a more temporary kind.

2079. We decided also that it would be necessary to provide land which might be held by natives on a more private form of tenure than is at present possible in the native reserves, and we therefore proposed the provision of Class C land, or "Native Leasehold Areas".

2080. We also decided to recommend that there should be lands Class D, in which no special privilege of race should obtain in respect either of initial grants or transfers. Such land would in effect be all the land in the country, which is neither existing native reserve, nor A, B, or C, nor European Highlands, nor an area, such as Turkana, in which certain tribes have special, though not exclusive, rights.

2081. We considered that by such an arrangement we should be able to provide for the needs of natives, both on tribal and individual lines, and to propose safeguards which would create a sufficient security, while at the same time preserving a reasonable elasticity.

2082. With this general plan in mind, but leaving the precise nature of the safeguards for subsequent consideration in a later stage of the Report, we first addressed ourselves to the tribal aspect of the matter, and for the first two parts of the Report

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confined ourselves principally to the task of deciding (a) what land the several tribes could claim on historical grounds, and (b) what land is necessary to them for the present or for such future requirements as can be clearly foreseen.

**The
Satisfaction of
Tribal Rights.**

2083. In so far as tribal claims of right are concerned, we have made a detailed examination in each case and have made recommendations for a final settlement.

2084. The total additions which we have recommended to be made to tribal territory in satisfaction of such claims amount (on balance, after allowing for exchanges) to approximately 1,474 square miles, or 3 per cent of the present total area of the native reserves.

**Estimate of
Tribal Needs.**

2085. In order to reach an estimate of the needs of the various tribes in respect of land, we took evidence regarding the quality of the land at the disposal of each tribe and regarding the habits and degree of advancement of the people. We found that the reserves, taken as a whole, should easily be able to support the total native population which lives in them, the general density being 53 to the square mile. But there is a very uneven distribution.

2086. We found that in the three Kikuyu districts some degree of local congestion exists, but no general congestion; that it could to a large measure be relieved by the practice of better methods of agriculture and animal husbandry, and by modifications in the system of land tenure designed to promote a greater fluidity of distribution; but that the learning of these lessons would necessarily be a slow process, and that an addition of land was required in order to reduce the pressure of population on the land until such time as the Kikuyu should have attained greater skill in agriculture and the conduct of social life, such as would render the land capable of supporting a larger population in a greater degree of material comfort. We have therefore recommended a substantial addition to the Kikuyu Reserve.

2087. The case of the Teita is somewhat similar, and for them also we have recommended an extension on economic grounds. But among the agricultural tribes generally, and especially the Kavirondo, we found that the land is being so unskillfully used that even a moderately successful programme of education in agricultural and pastoral practice should suffice to raise the standard of life progressively for many years, even though the population is increasing.

2088. Claims for extension of territory were advanced by most tribes on the ground that they have not enough pasture land for their cattle. In some few cases, for instance those of the Taveta and the Elgeyo and to a less extent the Kamba of Machakos district, we have found the claim to be justified in the sense that the land which the tribe has at its command is not sufficient, unless a

SUMMARY OF RECOMMENDATIONS

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notable improvement in methods of stock-farming takes place, to enable it to keep the number of cattle which it may reasonably be thought to require. In these cases we have recommended additions of land on economic grounds.

But in most cases—for instance, those of the Suk and the Njemps—the truth of the matter is that the tribe concerned, by wanton accumulation of unmarketable live stock far in excess of its needs, has produced such devastation by overstocking that, unless conditions are drastically changed, the ruination of these reserves is in sight. In such cases, the only real remedy is to strike at the root of the evil and reduce the number of live stock, and we have written a special chapter stating the lines on which, in our opinion, action ought to be taken. In the confidence that these measures will be taken, we have recommended certain additions of grazing lands in order that they may be used as resting grounds in connexion with an organized plan of regenerating the reserves.

2089. The sum total of the additions which we have recommended to be made on grounds of economic need are 896 square miles as Class B1 and 259 square miles as Class B2. The total additions which we have recommended to be made to native areas, whether as Class A, B, or C, are 2,629 square miles, or an increase of 5.4 per cent of the present total area of the native reserves.

2090. The specific recommendations which we have made for the various tribes may be summarized shortly.

Specific
Recommendations by
Tribes.

2091. Most of the alienations of which complaint is made by the Kikuyu took place in or on the borders of what is now the Kiambu district. Our examination of the facts has justified the conclusion that this district was only sparsely occupied at that time as far as any visible occupation was concerned, and it was natural that Government should have taken the view that there was much waste land which could be alienated without detriment to the natives.

(i) The
Kikuyu.

2092. But the alienations increased the density of the native population in the Kikuyu Reserve, not only by restricting the area, but also in other ways. They were part of the policy of white settlement which resulted in the establishment of a considerable town and market at Nairobi, which has drawn population in that direction, and problems of local congestion are arising in the reserve which threaten to become acute in the next generation.

2093. In all the circumstances we decided that it would be a just settlement with the Kikuyu tribe if we should first make an assessment on the lines of a "profit and loss" account, showing the

SUMMARY OF RECOMMENDATIONS

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extent of their true losses of territory and give them compensation by an addition of an equivalent area to rank as "Native Lands", and should then add another area as Native Reserve, Class B, to satisfy their economic needs.

2094. For the purposes of striking the balance we assumed that the following areas had already been added to the reserve :—

The Mwea Area.—205 square miles, the addition of which had already been approved by the Governor in Council in 1928, and which had been used as native reserve ever since, though never so gazetted.

L.O. 4450.—0.69 square miles, which had been used by natives with the permission of Government for a number of years.

L.O. 368/1.—0.62 square miles, surrendered by the Africa Inland Mission at Kijabe in 1930 to satisfy native claims.

2095. By an exhaustive examination of the evidence and records we reached a conclusion on the position of the old Kikuyu boundaries in 1895, and the extent of the area which might be held to have been "admissibly acquired" since that date, and finally concluded that a further balance of 16,520 acres was due to the Kikuyu tribe to be added as "Native Lands". We then added a further 2,000 acres as general compensation for disturbance; a further 1,000 acres in connexion with the admission to the reserve of certain Dorobo now resident in the forest reserve; and a further 1,522 acres as a provision for the Kithirioni and Tigoni exchanges. We knocked off the odd amount of 42 acres, and made the result a round figure of 21,000 acres.

2096. We then made recommendations at section 466, as to how the necessary land might be found. The bulk of it is from forest reserve; 2,000 acres are by voluntary surrender of mission land; and there are four cases where the acquisition of private land, either by exchange or purchase, is recommended. These are areas which are already to a considerable extent in occupation by natives who claim rights under section 86 of the Crown Lands Ordinance. They are :—

	<i>Acres.</i>
Part of L.O. 325/R, Saba Saba Limited	1,000
L.O. 295/2/R, belonging to the White Sisters	80
Part of L.O. 134/4, Njunu Estate	250
Part of the British East Africa Wattle Estate in the Dagoretti area	78
	1,408

SUMMARY OF RECOMMENDATIONS

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It is also proposed that L.O. 1322, Dagoretti Township Reserve, be added to the native reserve, part of the land so added to be set apart for a trading and social service centre.

2097. The recommendations in regard to the Tigoni exchange, by which the natives would be moved from Tigoni on favourable terms and Tigoni would be at the disposal of the Crown, are to be found at section 394 of the Report.

2098. In settlement of the claim of the Kikuyu to more land on the ground of economic needs, we have recommended, at section 542, that 383 square miles of the northern part of the Yatta be added to the Kikuyu tribal area as Native Reserve, Class B1.

The Settlement of the Kikuyu Claim to Land on the Ground of Economic Needs.

2099. A point arose as to whether the settlement of tribal claims as a whole could equitably be held to comprise a settlement with every member of the tribe, or whether individuals should still be able to claim rights outside the tribal boundaries, on the strength of *githaka* rights or claims to protection under section 86 of the Crown Lands Ordinance. We reviewed the matter in considerable detail in Chapters VII to IX of Part I. Our recommendation, given at section 367, was to the effect that in consideration of a sum of £2,000 to be paid to the Local Native Councils for distribution to the persons affected, and in consideration of the block addition of two thousand acres which we had recommended to be added to the tribal territory in general compensation for disturbance and in consideration of the general settlement with the tribe, both in respect of its rights and its economic needs, all private rights of Kikuyu to land outside the Kikuyu Native Reserve should be extinguished, except (a) such rights, if any, as may be held upon title and (b) such rights as may have been acquired in another native reserve, e.g. as a *muhoi* or tenant under the system of land tenure obtaining.

The Kikuyu Settlement from the Point of View of Private Claims.

2100. The proposed boundaries of the Meru Native Reserve were gazetted for criticism in 1925, but different boundaries were proclaimed in 1926, which excluded 626 square miles. A reversion to the boundaries as provisionally gazetted in 1925 was approved by the Governor in Council in 1928, but the addition has not yet been gazetted. We have recommended that the addition be made.

The Claims of the Meru Tribe.

At section 569 we have made a recommendation that Government should meet the full charges in connexion with the supply-furrow to the Morania furrow, both in respect of actual cost and maintenance.

At section 570, we recommend that the Meru should be allowed to negotiate for the purchase of L.O. 4634, if the lessee is willing to sell.

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At section 572, we recommend that the Somalis should evacuate the land which they now occupy in the Meru Native Reserve.

At section 573, we recommend that the question of the boundary of the native reserve forest reserve be reconsidered.

At section 576, we recommend that the King's African Rifles should pay rent for the land which they occupy in the Meru Native Reserve.

The Land
Problems of
the Masai.

2101. In Chapter I of Part II we review the circumstances which led to the Masai Agreements of 1904 and 1911, and consider the effect of those agreements.

At section 671, we recommend that, in so far as our proposals in Part III of the Report respecting the Lands Trust Ordinance are accepted by Government, they should be equally applicable to all tribes, and that there is no need for special clauses for the Masai.

At section 677 we have recorded our finding to the effect that the Masai have no claim of right either to the Mile Zone or the Chyulu Triangle. At section 681, we recommend that the Masai should be given an opportunity of taking out annual leases at a reasonable rent, such leases to be renewable until such time as equivalent watering facilities are made available in the adjoining parts of the Masai Native Reserve. At section 1963 in Part III of the Report we recommend that, this temporary facility to the Masai notwithstanding, the status of the Mile Zone should be European Highlands.

At section 684, following a decision of the Governor in Council, we have recommended that the area known as the Quarter Mile Zone along the Magadi Railway, be included in the Masai Native Reserve.

At section 691 we have recorded our finding that those parts of farms L.O. 193, 196 and 197 which are south of the Mbagathi River are at present in the Masai Native Reserve, and we have recommended that the Masai Local Native Council should receive the amount which was paid to Government for the purchase of the land.

At section 695, we have recommended that the Masai should receive an area of the total extent of 14,068 acres, most of which is valuable grazing land on the southern extremity of the Eastern Mau Forest Reserve, in exchange for an area of 13,245 acres of forest which would become forest reserve. The area which the Masai would receive contains a tongue of forest land, about 1,216 acres in extent, in which there is valuable cedar. We have recommended that it should become native forest reserve.

SUMMARY OF RECOMMENDATIONS

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At section 696, following a recommendation of the Governor in Council which has already taken effect, we have recommended that the gift to the Masai of 118 square miles in the Kedong Valley in return for the Kinangop circumcision area should be regularized by the addition of the area to the Masai Native Reserve.

At section 697, we have recommended that a portion of L.O. 410/1 be exchanged for an equivalent portion of adjacent native reserve with a view to giving the Masai a more convenient access to the river Marmonet.

At section 698, we have discussed the advisability of certain exchanges or leases which are illustrated in the map at section 700 of the Report. One of these exchanges is already in operation as a temporary arrangement between the Masai and the Kikuyu, by which the Masai have the use of a part of the Ndeiya location of Kikuyu in return for an equivalent area near the Embakasi forest reserve. The area involved on each side is believed to be approximately ten square miles, and we have recommended mutual leases.

It is particularly important that, if possible, Government should secure, by lease or exchange, the area marked E on the map in order that it may be used as a native leasehold area. We have shown it as such in the schedule at section 1879, and have made clear, at section 620, the advantages of securing such an area in reasonable proximity to Nairobi.

At sections 712 and 713 we consider the possibility of future exchanges.

2102. The facilities which we have recommended for the Kamba tribe comprise (i) the addition of approximately 300 square miles of the Yatta Plateau; (ii) an advantageous exchange by which the tribe would give up the Kikumbulu location of 389 square miles south of the railway and receive an area of approximately 512 square miles north of the railway between Emali and Makindu; (iii) the addition of 700 acres at Mwani hill; and (iv) about three square miles in the neighbourhood of Emali station. The first of these items is recommended as Class B 1, and the remainder as Class A. The section references are 759, 776, 779, 783, and the position of the land involved is shown on the coloured map following this chapter.

The Claims of
the Kamba
Tribe.

Recommendations of a minor kind include a proposed exchange of twenty acres in the neighbourhood of Momandu (section 774) and a proposal that, if ever Ngalei farm (L.O. 4969; 100 acres) comes into the market, the Kamba should be allowed to bid for it (section 772); and a proposal that Government should negotiate with the Church of Scotland Mission for a corridor of access to connect the Mbuinzaio block with the main reserve (section 789).

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At section 782 we have recommended that an area of approximately 100 square miles eastward of Emali in the general position shown on the map (at section 796) should remain at the disposal of the Crown, since we consider that this area may be required in connexion with the establishment of a blood and bone fertilizer factory.

At section 793 we have recommended that a mistake which occurred in the gazettelement of the Kitui district boundary be rectified. This will add sixty square miles to the Kitui Native Reserve as at present gazetted.

Native Rights
in the
Northern
Frontier and
Turkana
Provinces.

2103. We have recommended that except for the West Suk and North Pokomo reserves there should be no native reserves in the Northern Frontier and Turkana Provinces; the land, except in these two reserves, should not be regarded as wholly devoted to native purposes; but it should be recognized as land in which natives have a prior interest; leases to non-natives should not be allowed to such an extent as to justify the apprehension that the natives might not have sufficient land remaining for their use. The above recommendation should apply generally to the Leroki Plateau as well as to other parts of these provinces, at least for many years to come, but leases of large areas to non-natives on the Leroki Plateau should not be allowed except for purposes directly beneficial to natives (sections 805-807).

The
Mukogodo, the
Ndigiri, the
Ilimwesi and
the Mumonyot
Masai.

2104. We have recommended that the Mukogodo area should be detached from the Kikuyu Province and added to the Northern Frontier Province for purposes of land administration, and that the Provincial Commissioner should make arrangements for the provision of sufficient land for the Mukogodo, the Ndigiri, the Ilimwesi and the Mumonyot Masai (section 810).

Claims of the
West Suk.

2105. We have not thought it necessary to recommend any land to be given to the West Suk in addition to the land of which they now have the use. A proposal was put forward for our consideration to the effect that, by an adjustment of the inter-colonial boundary, the districts of Turkana and West Suk in Kenya and Karamoja in Uganda should be included under one administration. We regarded this matter as outside our terms of reference, but remarked that it appears to merit serious consideration (sections 909-913).

The Uasin
Gishu Masai.

2106. At section 923 we recommend that the Uasin Gishu Masai should leave their present area and be accommodated in the Trans-Mara region of the Masai Native Reserve.

The Pokwot
(East Suk).

2107. At section 939 we have recommended that the Pokwot should have Churo as a provisional native reserve (Class B 2) and that the area of the extension should be between 130 and 150 square miles.

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2108. We have recommended an extension amounting altogether to 100 square miles to be added to the reserve as Class B 1. (Sections 942 and 969.)

The Njemps
and the
Kamasia.

As further facilities for the Kamasia we have recommended (i) that they should be given approximately 74 square miles of the land evacuated by the Uasin Gishu Masai as native reserve Class B 1 and that the balance of some five square miles round Eldalat hill should be forest reserve; (ii) that Government should lease for them certain alienated farms comprising twenty-three square miles; (iii) that L.O. 1168 (920 acres) and a further area of 960 acres to the east of Lembus forest should be given to them as native land Class A. (See sections 967, 968, 970 and 971.)

2109. At section 977, in agreement with the findings of the special committee appointed in 1929 to report upon the Dorobo problem, we have recommended that as a general rule, Dorobo should be moved into the reserves of those native tribes with which they have the most affinity. But in regard to the Mau section we have recommended at section 979 that they should be consulted as to whether they would prefer to go to the Chepalungu (to be added as part of the Lumibwa Native Reserve) or into another native reserve.

Accommodation
for the
Dorobo.

2110. The facilities which we have recommended for the Elgeyo, Cherangani and Marakwet comprise: (i) an advantageous exchange by which the Elgeyo give up 4,933 acres of forest or scrub in return for 4,977 acres containing a large proportion of pasture land; (ii) the addition to the reserve as Class B 1 of L.O. 1869 and also of certain unalienated land in the Cherangani farm area, the total extent of the relief afforded being, on balance, 16½ square miles (see sections 1008, 1009, and 1020).

The Elgeyo,
Cherangani
and Marakwet

2111. At section 1066 we recommended a payment of £5,000 to the Nandi as an estimated equivalent of the true loss sustained by them by reason of circumstances connected with the alienation of the Kipkarren and Kaimosi farms, particularly in connexion with the waiving of stand premia.

The Nandi.

At section 1068 we have recommended a modification of the Cogle Line which would have the effect of restoring three square miles to native use together with valuable salt licks. We have added a recommendation that when the boundary of the Kipkarren farms has been amended in this way, the unalienated land inside it should be available for alienation to Europeans.

2112. Our recommendations regarding the El Gonyi are stated at section 1087, and are to the effect that (i) they should be moved from the alienated farms, compensation being paid to those natives who have resided there continuously for three years or more, and that

The El Gonyi.

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the assessment of such compensation should be left to the Administration; (ii) the moorland area of Mount Elgon, comprising some 40,000 acres, should be added to the Kavirondo Native Reserve and set aside for the use of the El Gonyi, who should also be able to find accommodation in other parts of the Kavirondo Native Reserve, or, to the extent that the Uganda Government may be willing to accommodate more El Gonyi in its territory, they should have the option of going there.

The Claims of
the Kavirondo
Reserve.

2113. Besides the addition of the 40,000 acres just mentioned the following facilities have been recommended for the Kavirondo Native Reserve.

At section 1118 we noted the intention of Government to add to the reserve 1,380 acres which now form part of the Kisumu Township, and we recommended that it be implemented, remarking that in our opinion the natives will have been treated not only fairly but generously.

At section 1127 we have recommended that 900 acres at Maseno, at present in use as a social service centre but excluded from the reserve, be no longer excluded but become a social service centre in the reserve.

At section 1136 we have made a proposal that, if ever the farm L.O. 653 comes into the market, the natives should be allowed to bid for it, either tribally or privately.

A special chapter (No. 13 of Part II) has been devoted to the question of mining leases in the Kakamega area.

The Claims of
the Lumbwa.

2114. At section 1176 we recommended that approximately 148½ square miles of the area known as Chepalungu be added to the Lumbwa Native Reserve as native land Class A, but that Government should reserve in it such locations as it may consider advisable for the use of the Dorobo who are moved into Chepalungu from the Mau area.

At section 1153 we recommend that the Lumbwa should have the use of the Chematum salt-lick and that Government should erect and maintain a fence along the road of access out of general revenue.

At section 1180 we recommend that the Lumbwa should have access to the Kibit Bitein salt-lick for the purpose of removing salt but should not have rights to take their stock there.

At section 1183 we have recommended that an area not exceeding two square miles should be set apart at Chemagel for a township, but should not be excluded from the native reserve.

The Claims of
the Duruma.

2115. At section 1203 we have stated the facts concerning the Duruma claim to the Mwachi Valley in so far as they are known

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to us. But certain evidence coming to hand at the last moment caused a doubt as to whether we have, even now, all the facts before us. We therefore decided to make no recommendation, except that a special inquiry should be undertaken, preferably by the Provincial Commissioner.

At section 1213 we have recommended an exchange in the Mwachi forest area involving approximately 2,000 acres on each side. The chief advantage to the natives is that they will have a clearly defined boundary which will include two *kayas* or sacred places in the reserve.

2116. We have recommended additions to the Taveta Native Reserve of 22½ square miles as Class B 1. We have also recommended that the Local Native Council should be allowed to open negotiations for the purchase of L.R. 4881 from Messrs. Sedgwick and Goodwillie (*see* sections 1229-1231).

The Claims of
the Taveta.

2117. In order to satisfy a claim of right by the Teita tribe we have recommended that Government purchase L.O. 924 Wundanyi Estate and that it be added to the Dabida Native Reserve as native land, Class A. The section reference is 1255.

The Claims of
the Teita
and the
Kasigao.

We have also recommended that negotiations be opened with the Teita Concessions, Limited for the surrender of two areas, respectively three square miles and eleven square miles in extent, or thereabouts, in satisfaction of rights held respectively by the Teita and the Kasigao, these areas being, in our opinion, subject to native rights and deemed to be excluded from the lease as provided in section 86 of the Crown Lands Ordinance. With the addition of these areas to the reserve, the residue of the estate should pass unencumbered to the lessees, who, under section 31 of the 1902 ordinance would be entitled to a reduction of rent. (*See* sections 1259-1271.)

We have made further recommendations at sections 1273 and 1275, by which additional land amounting to 65 square miles would be added to the native reserve as native lands, Class A and 119 square miles would be added as temporary native reserve, Class B 2. These areas would be added from adjacent unalienated Crown land, and we have recommended that, if the Teita are successful in clearing the temporary area of tsetse fly, they should have it as native reserve, Class B 1.

At section 1280 we have recommended a very minor adjustment of the boundary near Voi River bridge.

2118. At section 1286 we have recommended that, if considered desirable, the Sagalla natives should be given permission to cultivate on Maungu hill on temporary lease or licence. At section 1287 we propose a small adjustment of boundary, due to the fact of the Voi River having altered its course.

The Sagalla
Native
Reserve.

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Native
Reserves on
the Coastal
Strip.

2119. At section 1293 we have recommended that the native reserves on the coastal strip should not be extended without very good reason; but we have found good reason to exist for giving 600 acres, now used as commonage, to the Pungu-Mzichenda Native Reserve (section 1296).

The Galla.

2120. At section 1297 we have recommended that the land occupied by the Galla between the Tana River and the Kitui Native Reserve should be treated on the same footing as we have recommended for the Northern Frontier Province and Turkana.

The Units of
Native Lands.

2121. It seemed to us that the Lands Trust Ordinance, by reserving particular lands for the use and benefit of particular tribes "for ever", had introduced a rigidity into the land system which might be extremely detrimental to future progress. While fully appreciating the need for security we decided that greater elasticity ought to be introduced.

2122. In our opinion the present system of a large number of comparatively small reserves had little to commend it. There appeared, for instance, to be no reason why the land of the homogeneous Kikuyu tribe should be divided artificially into three units. We considered that peaceful interpenetration would be facilitated and a more economic distribution of the population would ultimately be secured if the tribal units were larger. We therefore recommended only nine main units of native lands, as set out in the table following section 1510 of the Report.

Degrees of
Security for
Different
Classes of
Land.

2123. It was also in the interests of elasticity that we made the classification of lands into A, B 1, B 2, etc. It seemed to us absurd that land added to tribal territory for the fulfilment of an economic need should be added "for ever", although there is no guarantee that the need will be permanent. We therefore determined that a different degree of security was necessary for each class.

The Security
of Native
Areas.

2124. At section 1639 we have recommended that Native Lands should cease to be Crown land, but should be vested in a trust, and be subject to the sovereignty of the Crown and its rights to minerals, forests, water, and general power of control.

The conditions on which exclusions may take place are covered in sections 1518 and 1521.

2125. The security proposed for Native Reserves (B1) is that they should be Crown lands under the protection of the Lands Trust Board. They could not be diminished or taken away without the consent of the Lands Trust Board, excepting only that an appeal should lie to the Secretary of State (section 1459). "Temporary

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native reserves” would be held on lease terminable by the Governor, with the approval of the Secretary of State, but the Lands Trust Board should be consulted (section 1460).

2126. The recommendations hitherto reviewed in this summary have concerned themselves mainly with matters affecting the tribal boundaries, either in respect of extensions, or exchanges or safeguards. We now turn to the recommendations affecting the tenure of land inside the boundaries :

(Questions of
Internal
Tenure.

Such questions are of two kinds : tenure of land as between native and native, and questions affecting the acquisition of land for purposes of social service, trade, or industry.

2127. On the question of tenure of land by natives we have recommended, at sections 1639 and 1796, that the rights of particular tribes, groups, families and individuals should be covered by a declaration that they shall have all the rights and powers in respect of land which they have under native law and custom, as it is or as it may become, in so far as they are not repugnant to the Lands Trust Ordinance or rules under it, or any other law or ordinance of the Colony.

Tenure of
Land by
Natives.

2128. At section 1653 we have discussed the point whether the system of land tenure should depend entirely on native custom, or whether it should be capable of modification by rule. We have recommended, at section 1655, that Government must take and use the power to make rules. At section 1657 we recommended a procedure which would ensure that no rules would be made without prolonged deliberation or without consultation of the natives.

The Method of
regulating the
System of
Land Tenure.

2129. In Chapter III of Part III we have discussed exhaustively the methods which we recommend for the acquisition of plots for the purposes of social service, trade or industry. The chapter does not lend itself to compression in the form of a summary.

The Acquisition
of Plots
for purposes
of Social
Service, Trade
or Industry.

2130. At section 1544 we recommend that in the creation and development of townships in native reserves, the basic principle should be that they should remain in the reserve and grow progressively out of plots set apart as need arises.

Townships in
Native
Reserves.

At section 1551 we recorded our opinion that in the cases of Fort Hall and Kakamega townships there are certain right-holders to whom compensation is due ; we also recorded our opinion that these cases are exceptional and that there are no other existing townships in native reserves in respect of which any compensation is due to private right-holders.

2131. Our general recommendations in regard to mining leases and other matters relating to mining are to be found at sections 1558-1594. But in the particular case of Kakamega we have made special proposals at section 1146 *et seq.*

Mining Leases.

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Water Rights,
Roads and
Railways,
Native Reserve
Forests.

2132. Our recommendations in regard to water rights are at sections 1595-1606; in regard to roads and railways at sections 1607-1617; and in regard to native reserve forests they are at sections 1618-1622.

Conservation
of Land.

2133. Turning from the subject of land tenure to the allied subject of the utilization of land we wish to invite especial attention to the recommendations at section 2040 of the Report in which we state the measures necessary to safeguard the native areas from deterioration through overstocking.

The Duties of
the Lands
Trust Board
and of the
Administra-
tion.

2134. At section 1691 we have recommended that, while the function of the Lands Trust Board is to protect, the responsibility for the management, development, administration and control of native lands rests directly with Government.

At section 1697, after reviewing the duties of the Board, and stating the comparative advantages and disadvantages of a Board resident in England and a Board in Kenya, we have expressed a preference for the former, for reasons stated in the section.

The Working
of the Lands
Trust
Ordinance.

2135. We have devoted a special chapter (Chapter VI of Part III) to a review of the workings of the Lands Trust Ordinance. We have recommended a reconstruction of the ordinance on lines which will constitute the Lands Trust Board essentially a protector, while the task of internal control and development would belong unequivocally to Government. We have also recommended that the existence of private rights should be kept more closely in mind. We found in the present ordinance too pronounced a tendency to regard the native reserves as a common.

Facilities for
Natives
outside the
Tribal Areas.

2136. That concludes our summary of those parts of the Report which deal with tribal areas. We now turn to the recommendations concerning facilities for natives outside the tribal areas.

Urban Natives.

2137. In Chapter XVII of Part I and Chapter VI of Part II we have examined certain special problems of Nairobi and Mombasa respectively. Our specific recommendations will be found in the following sections: at section 591, regarding Pangani native village; at sections 593, 594, regarding Pumwani native quarter; at 601-608 regarding Kibira Sudanese settlement; at 631, regarding the Somalis on Nairobi commonage; and at 1363 regarding Mombasa housing scheme.

The case of
Urban Natives
who are
returned to
their Reserves.

2138. At section 623 we make a recommendation of a more general application. It is to the effect that, when a native is returned to his reserve from an urban area, either as a vagrant or under any lawful order, the District Commissioner of his own reserve must have power to find accommodation for him; the rules

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of land tenure must not be such as to preclude such a native from obtaining accommodation at least as a tenant, and receiving a sufficiency of land to cultivate.

2139. At section 1879 we have given a schedule of the lands which we recommend to be native leasehold areas. Their total area is 939 square miles.

Native Leasehold Areas.

At section 1880 we recommend that every such area should be under the supervision and control of the Provincial Commissioner in whose province it is situated, and that he should deal with it through an advisory body constituted on the lines of a Local Land Board in a native reserve.

Sections 1882-1935 contain our proposals for the method of tenure of land in native leasehold areas.

2140. At section 1854, we have recommended in effect that, provided that our proposals for extensions of native reserves are accepted, and provided that compensation in other forms is paid in cases in which we have recommended it (e.g. the recommendation at section 1087 regarding the Elgoni), then steps should be taken to render section 86 of the Crown Lands Ordinance, 1915, and section 31 of the Crown Lands Ordinance, 1902, inoperative both in existing and future leases; provided that the recommendation should not apply to land in the Coast strip.

Section 86 of the Crown Lands Ordinance.

In this connexion we have recommended, at section 1858, that an Order in Council be sought.

2141. Section 1970 states the manner in which we have arrived at a definition of the European Highlands; in section 1971, the area is stated to be approximately 16,700 square miles, as shown on the map following section 1976. In section 1979 we recommend that the boundaries of the European Highlands be safeguarded by an Order in Council.

The European Highlands.

2142. Although the matter is not strictly within our terms of reference, we supported, at section 632, a proposal by the Game Warden that the greater part of the Nairobi Commonage should become a national game park, and we stated that, in our opinion, it would be in the best interests of the Colony that the land should be devoted to this purpose. In regard to a further proposal by the Game Warden that there be a national game park near Mount Marsabit, we stated, at section 817, that we saw no objection to it, provided that adequate safeguards are introduced for limiting the number of animals to a point at which there is no danger of their causing impairment to the land.

Proposals for a National Game Park.

2143. We invite attention to the financial recommendations which we have made in the previous chapter.

Financial Recommendations.

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Recommendation regarding an Order in Council.

2144. Before closing our Report, we wish to make a final recommendation. In regard to all claims based on an allegation of right, the public of Kenya, both native and non-native, is looking to us for recommendations which will secure finality. These we have striven to provide, and we hope that, if our recommendations in this regard are accepted by Government, steps will be taken to ensure that these claims will not again be reopened. We consider that no other safeguard could be so effective as an Order in Council. *We are not concerned to propose what form it should take, but the effect should be that, subject to the special exceptions and qualifications contained in our recommendation at section 1854 above, all native rights outside the reserves should now be expunged in view of the additions made to tribal territory and the other forms of compensation provided.*

2145. It must not be thought that this proposal is made with any intention of preventing the natives from obtaining rights in land outside the reserves. On the contrary, the recommendations made in the Report concerning native leasehold areas and areas in which all races should have equal privileges in respect of land will provide the natives with far more facilities for acquiring land outside their reserves than they have ever had before. But it is to the advantage of nobody that the present precarious occupancy, resting on unascertainable claims of right or the protection of section 86 of the Crown Lands Ordinance, should continue. We recommend that the slate be cleaned by an expunging of these nebulous rights, and afterwards natives will have ample opportunity to take up land on lease in native leasehold areas should they prefer that course to living in the reserves.

2146. The essential point is that there should be no hang-over of further claims in the areas for which we have recommended a settlement on tribal lines. Areas such as the Kenya Protectorate are exceptional, and are excluded from the scope of our recommendation.

2147. In the satisfaction of economic needs finality is not, in the nature of the subject, procurable. But we have proposed a general framework for a land system which provides, in our opinion, both sufficient security and sufficient elasticity. This framework, if accepted by Government, would be embodied in a reconstituted Native Lands Trust Ordinance. We recommend that the Ordinance itself be safeguarded by Order in Council; not as to all its clauses, but in all cardinal matters.

2148. We recommend that the boundaries of the nine main units of native lands which we have recommended be defined by the Order in Council; and that the clauses in the Lands Trust

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Ordinance which lay down how additions, exclusions or exchanges may be made should be safeguarded against amendment, unless by a new Order in Council.

2149. We recommend that the protection of the Order in Council should also be extended to native leasehold areas in respect of their external boundaries.

2150. We further recommend that the clauses which define the constitution and powers of the Lands Trust Board be similarly protected.

2151. We further recommend that the Order in Council should contain a declaration regarding the private rights of natives in the reserves on the lines suggested in section 1796 above.

2152. We consider that it would be invidious if the native reserves were to be protected in this manner and no similar security be given to the European Highlands. We recommend therefore that the external boundaries of the European Highlands be defined under the Order in Council, and be subject to analogous safeguards as to exclusions, additions and exchanges.

W. MORRIS CARTER.

R W. HEMSTED.

F. O'B. WILSON.

7th July, 1933.

APPENDICES

APPENDIX I

Extracts from Documents and Evidence Relating to the Question of the Extent of Kikuyu Territory in the period 1895-1902

NOTE.—The following extracts from files, documents and evidence are quoted for purposes of ready reference, but it is of course obvious that the conclusions reached by the Commissioners are based on the whole of the evidence. There is much important evidence which does not lend itself to quotation in short extracts.

SECTION A.

ON THE SUBJECT OF THE BOUNDARY WOOD.

(Referring to Sections 32-61 of the Report.)

Extracts from *Through Masailand* (Joseph Thomson), 1883-84:—

Page 308.—“The Masai have made repeated attempts to penetrate into the country, but they have found that the Kikuyu were more than a match for them in their dense forests.”

Map from *Through Masailand* (Joseph Thomson):—

“The position of the words ‘High Forest Region’ shows that the forest existed along the eastern boundary, where there is now very little trace of it, as well as on the other sides.”

Extracts from *Discovery by Count Teleki of Lakes Rudolf and Stephanie* (Von Hohnel), published in 1894 (the extracts relate to 1887):—

Page 289. “The Kikuyu do not venture out of the forests for fear of the Masai.”

Page 302.—“The narrow belt of primeval forest which forms a natural frontier encircling the whole of Kikuyuland.”

Page 330.—“Our camp on the ridge was near the eastern frontier of Kikuyuland, about $2\frac{1}{2}$ to 3 miles from the wood which seems to encircle the whole district.”

Page 332.—“The next two days we marched in a north-easterly direction, at a distance of about $3\frac{1}{2}$ to $4\frac{1}{2}$ miles from the boundary wood.”

Page 352. “The industrious natives have cleared away almost every trace of a forest from the interior, leaving only a belt as a frontier buttress from one to two hours’ march deep.”

Extract from *Early Days in East Africa* (Sir Frederick Jackson), relating to 1891:—

Page 169.—“Our camp just outside the protective belt of forest and natural boma of Kikuyu.”

Extract from *The Rise of Our East African Empire* (Lord Lugard), 1893:—

Page 419.—“It (Kikuyu) is surrounded by a belt of very fine timber forest.”

APPENDIX I—*contd.*

Extract from *Kenya from Chartered Company to Crown Colony (Hobley)*:—

Page 140.—“Much of the land so allocated (to settlers) was a buffer zone between the Masai and Kikuyu.”

Extract from *British Mission to Uganda in 1893* (Sir Gerald Portal):—

“We left the open plain and plunged into the darkness of a dense belt of forest which forms the natural boundary of the regions inhabited by the treacherous, cunning and usually hostile people of the Kikuyu.”

Extract from *British East Africa or IBEA* (P.L. McDermott), 1895:—

Page 423.—“Encircled by a dense belt of forest, which affords effective protection to the people from their enemies.”

Extract from *James Hannington* (Rev. E. C. Dawson), 1885:—

Page 342.—“August 25th: Arrived in the evening at Ngongo a Bagas. This place is situated on the borders of Masai land and the country of the Kikuyu. . . . The Kikuyu inhabit the forest-clad uplands, which here abut upon the plains of the Masai country. . . .”

Page 343.—“The bishop was very anxious to hold some intercourse with the Kikuyu, but they dared not venture down to his camp. He therefore went up to them with an escort of only ten men. Even then, he failed to gain their confidence. So far from attempting to do him any violence, the unhappy Wa-Kikuyu fled before him everywhere.”

Page 334.—“After waiting two hours, a single man came out from the forest, with fresh leaves in his hand, as a mark of submission and peace. He said the Chief was close by, and wanted to know whether we had come to fight or to buy grain. We explained . . . Three men next stepped out of the wood, told us the Chief was coming, and disappeared. Then the Chief came towards us, a man of about fifty years old, and half-drunk, reeling to and fro like a ship in a storm. . . . They refused to eat *muma* with us, and clamoured for the presents, which I gave them; after that they promised to bring food for sale. Off they went, and in a quarter of an hour buying and selling began . . .”

Page 347.—“Things went for a while very smoothly, though our famishing men were hard to restrain; till suddenly the cry of ‘Masai’ was raised, and a number of warriors leapt from the jungle with spears and shields. It was a false alarm, but the Kikuyu took fright, and again the market was stopped . . . The apparently desolate forest was in reality swarming with the Kikuyu; but they live in impenetrable fastnesses. Even the Swahili traders, with all their pretences, have not succeeded in peeping into their huts, and the formidable Masai cannot cope with them in the recesses of their own forest highlands. On Monday, the 7th, a more successful attempt was made to purchase food. The Bishop again went out with about a hundred men, whom he caused to sit in a circle while he dealt with the natives. The plain was soon crowded with the Kikuyu, who pressed in on every side. Our men, who had no trust in them, each had his loaded gun by his side. It was, however, almost impossible to prevent things from being stolen by these thievish people . . .”

APPENDIX 1—*contd.*

Extract from *Through Masailand* (Joseph Thomson):—

Page 407.—(At Ngongo Bagas): “We had to try to get into connexion with the Kikuyu to buy food. It was not an easy matter. . . . The large numbers of Masai who came to the camp by their presence prevented their enemies venturing down to us. . . . A fight resulting in several deaths took place.”

Extracts from *The Genesis of a Colony* (R. O. Preston):—

Of the forest near Nairobi, he states: “Those people (the Kikuyu) lived in fear and trembling of the Masai, and would not venture out of their forest country. When therefore the rails arrived in their country, and the hordes of railway workmen appeared on the scene, the Kikuyu felt safer and ventured out more.”

Of the Escarpment Forest, he states: “The Masai constantly preyed on their timid neighbours and were ever on the alert to drive off any sheep or cattle that might stray a short distance from the herds. Lying on the plains for days, they would watch their opportunity and silently stealing up the hill would drive the wanderers down the mountain. When a Kikuyu herdsman caught sight of a Masai anywhere in their vicinity, he would sound the warning cry that would at once be taken up by all the women in the fields for miles along the escarpment, and the herdsmen would hurriedly gather their flocks together and make for safety, further up the mountain.”

From the evidence of Hassan bin Jumbe (*Evidence*, p. 244):—

“I was on a *safari* with Count Teleki, who was known to the natives as Dakitumbo. He went to Ndoro in Masai country, about four days' march from the Kikuyu border. Nyeri was then Kikuyu country and the Uaso Nyiro was the Kikuyu boundary in the north and the Chania was the boundary between Masai and Kikuyu in the south. Count Teleki met the Samburu people near Rudolf.”

From the evidence of Hindi bin Hamisi (*Evidence*, p. 242):—

“Mr. Thomson went to Ngongo Bagas. The place was inhabited by Masai, who were in fact spread over the whole countryside, including Thathini. The *manyatta* of the Laibon Lenana was at Keya. On two occasions I visited Ngongo Bagas: once with Mr. Jackson, and once with Bishop Hannington, and saw Masai there but no Kikuyu. If we wanted food, we used to follow the Kikuyu with thirty or forty riflemen, and buy food at their market at Dagoretti, which was then in Masai country; so was Karen Estate, so was Mararoi.”

SECTION B.

ON THE EXTENT OF KIKUYU OCCUPATION ON
PLAINS BEYOND THE BOUNDARY WOOD.

(Referring to Sections 45-51 of the Report.)

Mr. C. W. Hobley, C.M.G., speaking of 1894:—

“We . . . camped on the future site of Nairobi Town. It was an open plain with relics of old Masai villages, and there were many skulls of Masai who had died in a smallpox epidemic a few years previously. There was no evidence of the Kikuyu having established any villages or cultivation on the plains outside the forest belt.”

APPENDIX 1—*contd.*

Colonel Ainsworth, C.M.G., D.S.O., C.B.E., writes that in 1892 he recovered a number of Masai women and children, who had been captured by Akamba, and wishing to hand them back set out to find the Masai. He continues:—

“We eventually arrived within the vicinity of the place we know now as Muthaiga, where some kraals were located. Here I handed over the women and children. . . . As I wanted to buy some donkeys for transport, the Masai took me to some kraals located near the Kamiti River. I went short distances up some of the forest glades. I, however, saw no cultivation and no natives other than the Masai.”

But in another part of his memorandum he records:—

“Long before 1898, those sections of the Masai who had been in the habit of occupying the grazing along the forest area had become considerably weakened through pleuro amongst their cattle, and smallpox. During 1895, it was necessary to take the remnants of the Kapte and Matapatu clans under the direct protection of Government, and they were moved temporarily to a place near Fort Smith, but early in 1896 we moved them to Ngong. . . . From this time on, the grazing north of the Nairobi River was less and less used by the Masai, but up to about 1898 a few kraals were to be seen on the higher land now known as Nairobi Hill.”

SECTION C.

ON THE SUBJECT OF THE NORTHERN BORDER
NEAR NYERI.

(Referring to Sections 73-87 of the Report.)

Senior Chief Wambugu (*Evidence*, p. 83):—

“Another old man called Wangai Kigira used to go to the junction of the Amboni and Gathingurengai Rivers for the same purpose (sacrifice).”

Evidence of Chief Enderi (*Evidence*, p. 85):—

“Our grandfathers used to tell us that the boundary with the Masai was the Amboni River.”

Evidence of Chief Nduini (*Evidence*, p. 107):—

“The boundary of the Kikuyu was the Amboni. . . .”

Q. “Were the Dorobo before the Kikuyu?”

A. “Neither was there before the other. When we went to hunt we used to find their fires. Our great-grandfathers used to tell us that they found Dorobo living on the other side of the river, but there was a market where we used to sell food to them. They used to wander about, and even went as far as Chief Murigo's home to hunt.”

Evidence of Kithugi Kagwamba (*Evidence*, p. 109):—

“These Europeans camped at Munyu Airitu. It was Kikuyu country. Now it is on Mr. Tuke's farm, between the Nairobi and Sagana Rivers.”

Evidence of Wambugu Mwigwa (*Evidence*, p. 110):—

Q. “Did you tell Mr. Evans that in your young days there were no Kikuyu north of the junction of the Chania and Sagana Rivers?”

A. “Yes, I did.”

APPENDIX I—*contd.*

Revision Case No. 23/29, Nyeri: Statement by Muhoya Kagumba (the defendant):—

“Before the Government came, all that land was bush, and nobody went there because of lions and elephants and the Masai. When my father went in, although he was not the first man who went into the bush, nobody else had established himself in that part, and no *ithaka* had been fixed.” (*Note*.—The land in question was in Ihururu *githaka*, near Nyeri Hill.)

Extract from *King of the Wakikuyu* (John Boyes), p. 132:—

“Arriving at last at Kakeri’s village, we were met by the chief himself and some of the elders of the tribe.”

Evidence of Mr. John Boyes (*Evidence*, p. 729):—

The Chairman made reference to a passage in Mr. Boyes’ book, reading, “There is now a fort and Government station at his old place at Nyeri, where I had first come across him,” and asked:—

Q. “Could you swear if that was the actual spot?”

A. “No, I could not.”

Extract from *King of the Wakikuyu* (John Boyes), p. 151:—

“It was Wangombe’s boast that Mount Kenya belonged to him, and the Wanderobo were his people, and joined him if there was a fight.”

Evidence of Mr. John Boyes (*Evidence*, p. 729):—

Q. “Had Karuri got a lot of people?”

A. “Yes; but after I crossed the Chania River there were no more Kikuyu. Wangombe lived on the south-west slopes of Kenya on a hill near Ragati River at Kargena.”

Evidence, p. 730:—

“Near Nyeri, the Chania River was considered the boundary, but Kikuyu went to graze their cattle on the north side after the Masai had shifted.”

Evidence of Brother Benedetto (*Evidence*, pp. 546, 547):—

“When I came here in 1903 there were no natives on the whole of our present farm. There were some Masai on the polo ground. . . . I hear that the Aithirandu ‘lan were on the west of Nyeri Hill. I never heard of anybody claiming the other side. . . . Before we came here, the Aithirandu ‘lan claimed the west side of Nyeri Hill, at, I think, the line they marked on the other side of the Chania River. The name ‘Muthari’ means ‘place of division’ in Kikuyu.”

SECTION D.

ON THE WESTERN FRONTIER.

(Referring to Sections 95-128 of the Report.)

Evidence of Mr. F. W. Isaac (*Evidence*):—

“The forest was the hiding-place of their live stock. They were pasturing in the forest glades.”

Q. “Could they pasture cattle in the forest itself?”

A. “No, not cattle, but they could pasture goats. All those forests are divided up, and you will get open glades suddenly in the middle of the forest.”

APPENDIX I—*contd.*

"At the back (of the Aberdare Forest) it would have been entirely Dorobo. The disputes which arose, which I can remember, were largely between Wa-Kikuyu and Dorobo. . . . They were scattered. If they were hungry they would go and steal the honey, and periodically the Kikuyu would steal theirs back again to get even. Then there would probably be a murder."

Extract from a Memorandum by the Fort Hall Native Council (*Evidence*, p. 119):—

"The boundaries on the west of Fort Hall District were in the earliest times as follows:—

"From the junction of Chania and Kiboro Rivers (which was the boundary of Kikuyu and Masai, who met with the Masai at a place called Gatura-ini).

"From Kiboro River to the junction of Ibuteti and Chania Rivers right up to Gathara-ini to the junction of Gathara-ini and Turasha Rivers, thence to Mutarakwa or Gitamaiyu (where Kikuyu of Fort Hall and Nyeri were making their sacrifices before proceeding to Masai Reserve)."

Evidence of Lokomore Ole Mbiryia (Kakanyuki; Masai) (*Evidence*, p. 238):—

"I showed you four different *manyattas*. One at Uplands (Ngaroya's), one (my own) at Escarpment, two at the junction of Limuru and Kikuyu roads, one between two hills, in the valleys. I swear that all these were in Masai country and were not Kikuyu country."

Evidence of Turuthi wa Githei (Dorobo) (Comments on above), (*Evidence*, p. 239):—

"Most of the evidence given by these Masai is quite untrue. . . . They (the witnesses) said they had their *manyattas* at Escarpment (Lari) and Uplands. They never had their *manyattas* there."

From the evidence of Abdulla bin Omari (*Evidence*, p. 243):—

"Mr. Hall and I saw Lelian at Uplands. His *manyatta* was just below the station, and he herded his cattle above it. Where Escarpment Station now is was purely Masai country. The Masai were at Kijabe when Mr. Dick was killed, and indeed their country stretched from Kijabe to the Kinangop, and on to Naivasha. The Kikuyu stayed in the forest because they were afraid of the Masai."

Evidence of Mr. Battiscombe (*Evidence*, p. 408):—

Regarding 1907 or thereabouts: "The greater part of the forest round the Lari Swamp . . . was claimed by a native chief . . . to have been bought from the Dorobo, but his claim was not recognized by Government. . . . I think they still claim a great deal of that forest, but the claim has never been recognized (the southern end of the forest surrounding Uplands Bacon Factory). He claimed the whole of the forest."

"There was cultivation by Kikuyu. They were encroaching in the forest. The Railway had been constructed, and the country settled, and there was nothing to worry the natives; I think they were increasing their cultivation then. . . . The Kikuyu were all eating into the forest. . . . To a certain extent, secondary forest grew up behind them, but they were continually going on all the time."

APPENDIX I—*contd.*

Q. "Did you ever see any signs of boundaries having been cut or indicated by marking trees?"

A. "No. I have no recollection of any having been pointed out to me, or having come across one. I do think it is possible that the forest was cut up into sections, but that was for purposes of elephant (ivory) and honey-gathering."

Evidence of the Hon. Charles Dundas (regarding 1911) (*Evidence*, p. 419):—

Q. "Would they have used the forest for any distance in?"

A. "Oh, yes, they would go a long way in. And there are also certain grasses and, if I recollect rightly, also mosses which they used for the bedding of stock and so on. Undoubtedly, I should think they might justifiably claim forest territory of which they had the absolute use before we came."

Evidence of Mr. A. G. Baker (regarding 1907) (*Evidence*, p. 447):

"(On the Aberdare Range) there were constant encroachments by the Kikuyu, who were continually burning and destroying the forests, eating their way in. . . They like every other year to get on to fresh land; they like to get new forest land. I think it was a general move westwards, as far as I could tell."

Q. "I see you say in your memorandum that there were a large number of pockets, as it were, of cultivation in the forest?"

A. "Yes. Generally speaking, it was only within, say, half a mile of the edge. They did not go very far in."

Q. "Where there any traces of cultivation well into the forest?"

A. "Not many. It was all practically on the edge."

Q. "Was there any grazing inside the forest itself?"

A. "Very little. The Kikuyu had very few cattle in those days. . . (goats) were going into the little glades. They were working in. They would go into the glades and work into the forest, and eat up all the young trees . . . (there were) quite a lot in those days. There were a good many sheep. Generally speaking, there was not much grazing in the forest. It is a wet tropical forest, and it is naturally very thick. It is only as a result of fires or destruction by human beings or animals that you get much grass at all."

Q. "Did you see any signs of the forest being demarcated in any way between various sections of the tribe?"

A. "Not that I saw."

Q. "Did you find beehives in the forest?"

A. "Yes; I should say they would be a good way in."

SECTION E.

ON THE LIMURU FARM AREA.

(Referring to Sections 129-137 of the Report.)

Extract from *Discovery by Count Teleki*, etc. (p. 315):—

"On September 12th, we started again . . . the path leading, as before, over many ridges and streams, the whole district being covered with fairly steep hills, extending north-west and south-east with a south-easterly trend. . . . The country is almost bare of trees, but

APPENDIX I—*contd.*

very well cultivated, the more humid valleys with sugar-cane, more rarely with bananas or colocasia; the hill slopes with potatoes, beans, millet, tobacco, and so on. . . . Count Teleki at the head of the caravan had the worst of it, for he had to clear his way through the natives, who always gathered in force at the streams. . . ."

"The next day's march (September 13th) took us over the highest ridge of Kikuyuland, and we camped at a height of about 6,800 feet, the maximum reached by us so far. The flat summit of the ridge was now completely overgrown with a species of fern from 6½ to 8 feet high, forming whole thickets. . . . The camp was besieged once more by hundreds of natives."

"On September 14th we resumed our march amid scenery very much the same as that just passed through, except that there was less cultivation, with more grass, bush and ferns. The country was, however, still well populated, and we passed several little settlements, consisting of from three to about twenty huts, either hidden in the woods or nestling against the slopes of the mountain in the midst of banana plantations. . . . The number of natives who attended our march increased to thousands as we proceeded, the women and children dashing off in terror at the slightest incident, whilst the warriors pressed more closely upon the caravan. . . . (A fight ensued, followed by a ceremony of blood-brotherhood.) We also paid for the use of our camping ground."

From the evidence of Hindi bin Hamisi (*Evidence*, p. 243):—

"Near Limuru there was a swamp which the Masai called Mangao (Kiboko), and there was a *boma* nearby belonging to Neilyani. I myself never saw these Masai at Limuru, although I am certain of my facts because we Swahili intermarry with the Masai, and they are our brothers."

Evidence of Hon. A. de V. Wade, Chief Native Commissioner:—

"I have often heard Mr. Hope talk about what happened in the Kiambu area. He mentioned the existing boundary, with particular reference to Farm 123 and the 'corridor'. I asked him about that, and old maps on which this farm used to be marked 'Native Reserve'. He said: 'The reason I reserved that farm was that I realized I had been giving away too much grazing, so I secured what I could at the last moment, and made that reserve with the corridor to it.' He said, generally in regard to that bit, and the Limuru farms: 'If we had known then what we know now we could not possibly have done it.' It was a source of very bitter regret to him."

Q. "When he made that statement, did you understand him to mean that, if he had realized what the nature of the Kikuyu native was, he would not have done it?"

A. "That is what he meant when he was talking about these Limuru farms. He knew nothing about the Kikuyu system of land tenure; he thought there was room for the natives elsewhere, and that no injustice would be done. They had compensation."

Evidence of Omar Mohamed (*Evidence*, p. 1865):—

"At Limuru in the old days there were Dorobo. They were Kikuyu Dorobo."

APPENDIX I—*contd.*

Evidence of Lengimojik, Masai (*Evidence*, p. 235):—

"All this Kikuyu land I showed you was ours. Where the Kikuyu Railway Station is now, all that country from Maguga down to the Kikuyu Railway Station and down to Fort Smith was Masai country, including the Ondiri Swamp and Naikumu, and all the country we went through till we got to Kiboko Swamp belonged to Masai."

SECTION F.

ON THE SOUTH-WESTERN FRONTIER NEAR DAGORETTI.

(Referring to Sections 142-155 of the Report.)

Extract from *Through Masailand* (Joseph Thomson), p. 310:—

"(Setting out from Ngongo Bagas) We traversed one of the most lovely woodland scenes. . . . Roads ten to twenty feet broad . . . penetrated the woods in every direction. Every here and there these roads opened out on a beautiful park or charming glade. Everywhere were evidences of the presence of elephants, although we saw none. These fine footpaths were a great puzzle to me at first. . . . On inquiry, I found that they had been formed by the continual passage of the great herds of the Masai between the different open reaches in the forest."

Extract from *The Rise of our East African Empire* (Lord Lugard), 1893:—

Page 326.—"I spent some time in examining the surrounding country (i.e. from Fort Smith) towards the forest under the guidance of the local chief, Eiyeki, and his brothers, and eventually selected a charming site at a little distance from the cultivation and villages. A clear mountain stream flowed at the foot of the slope; beyond was dense forest; in rear was another stream. Timber and fuel were of course in abundance. The name of the place was Dagoretti."

Page 332.—"(In building the fort at Dagoretti) we paid the penalty of disturbing the virgin soil, in a certain amount of fever in the caravan."

Extract from the private diary of Captain F. D. Lugard (now Lord Lugard):—

"To-day we settled up with Eiyeki and gave him a handsome present for the ground, etc. Altogether, to various chiefs, headmen, etc., everything included and deducting the value of 5 sheep bought, I estimate we had given the local value of 14 goats for presents, land, etc. I think this very fair on both sides."

Extract from *Soldiering and Surveying in British East Africa* (Major J. R. L. MacDonald, R.E.) (1891-94), p. 111:—

"In 1890, the Company decided to form a station near Kikuyu . . . and Captain Lugard was entrusted with this task. . . . Lugard decided on a place called Dagoretti. He chose the site more for political than military considerations, as he considered that there would be less chance of friction with the natives if the fort was not actually located among their clearings. By this means he also hoped to be able to influence the Masai, who could hardly venture to visit a station in the midst of their hereditary enemies, although they might go to Dagoretti with safety."

APPENDIX I—*contd.*

From a judgment by Mr. Justice Maxwell (Supreme Court Case 4358/20 of 17th November, 1920: Kimani and Kitosho, sons of Kahoto, *versus* Kioi wa Nagi):—

"Up to that year (1899), and probably after, two rival bands of Masai used to come to this neighbourhood raiding. In one, probably the last such raid, Kahoto, the putative father of both plaintiffs, was killed, 'one harvest before the famine'. According to one old gentleman, in 1899 the Masai and the Dorobo were 'fighting with tongues and not with spears'. I cannot be far wrong then in assuming that after the raid in which Kahoto was killed there was an armistice, and that 'peace was signed' some few months later.

"And one of the conditions of peace was that the Masai were to have all that part of my imaginary square south of the Neangara River and the Dorobo were to move over to the north of it. . . .

"I am satisfied that it is an historical fact. The entries in the Dagoretti record book allude to it. Ellagombe (a Masai) and Thinde Nuanambe (Dorobo) . . . speak of it quite clearly."

(*Note*.—The sketch plan at the head of it makes it clear that the section of the Neangara River in reference is a stretch of approximately five miles immediately to the north of Dagoretti *boma*.)

Evidence of Mr. Johnstone Kenyatta (*Evidence*, p. 426):—

"The Ngong is a boundary. . . . The Masai call it Ngong, and we call it Gitiba. . . . Take people like the missionaries who are near to the boundaries, like Dr. Arthur. When he built his mission house there he would have started teaching the Masai, or he would have got his land from the Masai. I think that is a proof showing that the land along there was occupied by Kikuyu people . . ."

"Wayaki was not very far away from Dagoretti, and not very far from the Ngong River. All that part used to be Kikuyu land. You have asked me about my personal experience. I remember when I was a young boy . . . it must have been some time ago, because there was no *boma* in Dagoretti; we used to take our sheep and goats to the Gitiba, where there were salt-licks. . . . I know the land there used to belong to Kikuyu. Gitiba is south-west of Dagoretti on the way to Ngongo Bagas, but nearer to Ngongo Bagas."

Evidence of Chief Koinange (*Evidence*, p. 245):—

"What was really known as the boundary between the Masai and Kikuyu was the Mbagathi River."

From the evidence of Hindi bin Hamisi (*Evidence*, p. 244):—

"The Kikuyu who brought food to the Dagoretti market lived across the Karura River. There were no Kikuyu where the Scotch Mission now is. There were Masai living there. I remember quite clearly that we moved them from what is now the Scotch Mission land owing to the fact that they were infected with smallpox."

Evidence of Mr. C. R. W. Lane (relating to 1896) (*Evidence*, p. 400):—

"South of the Railway there were natives in the vicinity of Dagoretti. . . . Before the move to Laikipia there were Masai all round Lake Elmenteita and Nakuru, and they were moved up to Laikipia with the Naivasha Masai. The Kikuyu then spread from the vicinity of Dagoretti towards Ngong, occupying lands which hitherto had belonged to the Masai."

APPENDIX I—*contd.*

Evidence of Dr. J. W. Arthur (*Evidence*, p. 456):—

"They (the Kikuyu) spread south until they reached the Dagoretti area. . . . Even at the time the mission came there was a good deal of forest there that is not there now. The mission itself stands absolutely on the south-westernmost point of the Kikuyu country."

4th September, 1912: Provincial Commissioner, Naivasha (Mr. J. W. T. McClellan), writing to the Provincial Commissioner, Nairobi (on the subject of the Kikuyu claiming the source of the Mbagathi River as "Kikuyu water") :—

"If there is likely to be friction over this water source, I would suggest that the Kikuyu be removed to the line just below the Dagoretti Station, which was their boundary in 1902."

13th February, 1912: Mr. M. W. Beech, Assistant District Commissioner, Dagoretti, writing to Mr. F. G. Hamilton, District Commissioner, Ngongo Bagas :—

"In the event of further dispute, I am prepared to furnish indisputable evidence proving that the country really belongs to the Kikuyu as far as the Ngong Hills."

18th March, 1913: Provincial Commissioner, Naivasha (Mr. McClellan), writing to Chief Secretary :—

"I know the country in question and the respective rights of Kikuyu and Masai probably better than anyone, as I selected the Dagoretti Station site (i.e. the new station at Dagoretti, which was made after the old station made by Captain Lugard had been destroyed), in order to be on the dividing line as nearly as possible between the Kikuyu and the Masai. Mr. Hobley, however, having only Kikuyu with him, went over a line agreeable to them, which, as gazetted, gave Kinanjui, a man with no hereditary claim whatever, the lands on which the Masai kraals stood, including Lenana's, in 1902. We therefore have not only deprived the Masai of grazing land . . . but have now taken away their water supply by giving it to the tribe they most despised, i.e. the Kikuyu."

15th December, 1912: District Commissioner, Ngongo Bagas, to Provincial Commissioner, Naivasha (regarding the fence erected near the Mbagathi) :—

"On the Kikuyu side of this fence is a vast amount of land which was undoubtedly Masai. I was shown to-day the site of an old kraal of Lenana's, perhaps a mile from the fence, where Kinanjui now keeps a large herd of cattle, which I saw grazing."

8th April, 1913: Provincial Commissioner, Nairobi (Mr. C. W. Hobley), writing to Chief Secretary :—

"I would point out that the area immediately north of the line was not occupied by the Kikuyu on their own initiative, but the Quarantine Board, with the approval of Government, moved some 10,000 head of stock into that area off the European farms, and there was no other area to move the cattle to . . . No land was given to Kinanjui. Kinanjui is only one among many Kikuyu stockowners . . . he has never claimed hereditary rights . . ."

APPENDIX I—*contd.*

31st May, 1913: Provincial Commissioner, Nairobi (Mr. S. L. Hinde), writing to Chief Secretary:—

"I have no hesitation in stating that Mr. McClellan is right in that the Masai certainly in 1898, when I was stationed at Ngong, occupied the banks of the Mbagathi River and several miles to the north of this river. Their stock route ran north-west to within a couple of miles of the Sclater Road, about two hours' march west of what is now Kikuyu Railway Station."

SECTION G.

ON THE NORTH-EASTERN FRONTIER, NEAR FORT SMITH AND TOWARDS NAIROBI.

(Referring to Sections 156-162 of the Report.)

Evidence of Mr. Hobley (*Evidence*, p. 442):—

"(1894, starting from Nairobi) There was no evidence of the Kikuyu having established any villages or cultivation on the plains outside the forest belt. Within about half a mile of our camp we entered the forest. We passed through a quarter or half a mile of forest, and then passed an open area which in later years became the sports ground. There was no occupation in this stretch. We then passed through another belt of forest, perhaps a mile thick, and then entered a scrub-covered area, with occasional villages of Kikuyu which extended to what is now Fort Smith. At Fort Smith, we found Mr. F. G. Hall in command. This station had been founded a couple of years previously. There was a considerable amount of Kikuyu cultivation and occupation in the vicinity . . ."

"Dagoretti had been vacated by Mr. George Wilson owing to an attack by the natives. In the vicinity of this fort (Fort Smith) there was also a considerable settlement of Masai. I understood that this section had quarrelled with the main Masai, and they had been brought there by Mr. Hall for shelter."

Extract from Memorandum by Colonel Ainsworth (*Evidence*, p. 494):—

"Early in 1893, the Kikuyu of Luguru and the area round Fort Smith attempted the same tactics which were successful in the case of Dagoretti; they also endeavoured to invest the station. Mr. Purkiss was successful in getting a message through to Machakos, upon receipt of which I left at once with a mixed force to help Purkiss. We proceeded via Muthaiga, and duly arrived at Fort Smith. The arrival of this force was the signal for the Kikuyu to disperse. It was only the fact that between Muthaiga and Fort Smith very few villages existed until close to Fort Smith that enabled us to arrive at our destination without any hostile opposition on the part of the Kikuyu."

Evidence of Mr. Lane (*Evidence*, p. 400):—

"1898. There were dense forests on either side of the road from Nairobi to Fort Smith. All caravans had to close up here, as there were always natives in the bush to spear the stragglers. Very soon this country was brought under administration by the late Mr. Frank Hall, and caravans were able to pass through unmolested. I have often ridden through the valleys down to Nairobi, shown on the north of the Uganda Railway, and I found native stock grazing in those valleys. I cannot remember whether there was any cultivation. I know they were grazing lands."

APPENDIX I—*contd.*

Evidence of Hindi bin Hamisi (*Evidence*, p. 243):—

"Mr. Hall told one section of the Masai to live at Fort Smith, and they built their *manyattas* there. The Kikuyu were then some distance off, although at the time the Fort was built by Major Smith it was then in Kikuyu country. There was a Masai *manyatta* where the present Agricultural Showground is, near Kabete. This was before the Loita fighting. Lord Delamere actually built his house at Loreshe, which was in Kikuyu country."

Evidence of Abdulla bin Omari (Swahili) (*Evidence*, p. 243):—

"There was a Masai *manyatta* where the present Agricultural Showground is near Kabete. This was before the Loita fighting."

Evidence of Ole Pidis (Kaputie Masai, age about 50-60) (*Evidence*, p. 237):—

"When Mr. Hall was here, Kikuyu were on the Showground. They were right up to Fort Smith; going to Fort Smith all that was full of Kikuyu. They were like grass at this place called Ngechi. At the time when the white people came to this country, some Kikuyu had crossed over on the other side of the Nairobi River, and were cutting down forest."

Evidence of Mr. John Patterson (*Evidence*, p. 744):—

"Mr. Watson and myself went to Kikuyu . . . in September, 1895. We stayed in Kikuyu until October. During that time we examined the country round Fort Smith. . . . From Nairobi to Fort Smith the greater part of the Kikuyu country was forest, intersected with small open glades, and in one part of the country of which I am speaking these glades were occupied by Masai and Dorobo, who were grazing their cattle. The Masai *manyattas* were all over these plains. Also at that time, the Kikuyu forest extended from Nairobi round the edge of the country to Fort Hall."

Evidence of Mr. T. A. Wood (*Evidence*, p. 742):—

"(1902) I took up a piece of land on the Karura River-Limuru Road—the road that goes through the top half of Muthaiga, north-west of the Karura Forest Reserve (*vide* map 19/1). When I took up that land there were one or two natives living on it. This was in 1902. Just a few Kikuyu.

"I was taking up a piece of land for residential purposes on the other side of Ainsworth Bridge; the house which is behind the one called 'Daraja'. . . . There were one or two native kraals there, and I paid compensation to the natives at Mr. Ainsworth's suggestion."

Q. "Kikuyu natives?"

A. "Yes."

"(Regarding Eastleigh) I do not remember anyone being there at all. It was all black cotton soil. There was a small settlement now known as Pangani, which Government are now trying to remove. Natives of all kinds were there."

Q. "The plot which you had at Karura, did you see any native occupation round you?"

A. "Very little; just odd ones here and there."

"(Regarding the country from Nairobi to Ruiru, flanking the Fort Hall Road, 1904-05): That part of the country seemed to be very empty in those days. That part was given out to European settlers, mainly because it was bare then . . ."

APPENDIX I—*contd.*

Q. "You do not recollect any signs of native occupation near the Showground?"

A. "I do not remember seeing any. If there had been, I should have seen them. . . . It was a sort of buffer area between Masai and Kikuyu."

Evidence of Father Bernhard (*Evidence*, p. 721):—

"(Regarding 1901) A man, Gathuku wa Chege, claims one mile by two miles of land on St. Austin's Mission Estate. . . . Gathuku occupied hardly three acres of that land, huts and cultivated land together. But even to that he had only the Chief Kinanji's permission to use it, as it was Kinanji's, and the chief gave it to the mission. . . ."

"The old aerodrome (Dagoretti and Ngong Roads) is claimed by the Kikuyu and some individuals to be theirs, whereas all know that it was not occupied by Kikuyu, and was in Masai area." (The witness goes on to explain that the Masai who were living there when he came were refugees, and that the nearest Kikuyu were on Mr. Thomson's estate.)

"Kinanji, then the chief, and a blood-brother of the Masai, was acknowledged by the Masai and Kikuyu as being the chief controller of land on the south side of the Nairobi River. . . ."

Q. "Was there no occupation on the mission land?"

A. "Only the chief, Kanathego, Njuguna and his people."

Q. "Did your land consist entirely of forest?"

A. "Yes. Just a few huts dotted here and there. There were very few *shambas* and a few cut trees."

(*Note*.—The impression conveyed by this evidence is that Kinanji obtained this land as being an acknowledged chief and also as having established friendly relations and blood-brotherhood with the Masai, and that other Kikuyu were only there by his permission; in that case, the beginning of this settlement could not well be earlier than 1895.)

Evidence of Mr. McQueen (*Evidence*, pp. 716-718):—

"I arrived in 1896. . . . I remained at Fort Smith for some time, and returned to Nairobi in March, 1898. . . . We first located the Kikuyu round where the Scott Laboratory is now. . . . There were no Kikuyu natives near the French Mission nor along by Kilimanjaro—all Masai.

"In 1898, I built my house, by the Cemetery. It was the first European house in Nairobi. I had to pay Sh. 5 a month for my plot. One Masai *manyatta* was to the right and one to the left. . . . I was on the plains, but right up against the forest.

"In 1897, I went out with Mr. Hall, of Fort Smith, on an elephant hunt. I should say we were about eight miles north of Fort Smith. . . . There were plenty of Kikuyu there."

Q. "Did you notice any difference in where the Kikuyu were from the time in October, 1896, when you first arrived at Fort Smith, and when you came from Uganda in 1902?"

A. "Rather. They were stretching down that way, in spite of having lost large numbers from the famine."

APPENDIX I—*contd.*

Q. "Were there more in 1902 than 1896?"

A. "Yes; spreading towards Nairobi and Ngong.

Evidence of Mr. Sandbach Baker (*Evidence*, p. 653):—

Q. "Were the Kikuyu at Government House?"

A. "That was getting on to the boundary. They were down below Government House, but there were Masai to the north of the Ngong River and to the south of Nairobi. The Kikuyu were certainly on both sides of the Nairobi River, i.e. above Nairobi, because the French Mission were the first people to start round there, and they were working in the Kikuyu country. That is from memory."

Evidence of Canon Leakey (regarding the land round the site of the Church Missionary Society Mission at Kabete, 1902) (*Evidence*, p. 847):—

"The first thing my predecessor, Dr. MacGregor, did when I arrived was to show me the boundaries . . . We bought only from the *mbari* of Muthemba. . . . The whole land in the neighbourhood was parcelled up into *mbaris*."

(The witness goes on to state that two miles east of the mission land at Kabete was the boundary of Mr. Cooper's land, and that natives named Kariuki wa Muti and Mingu had land on or near the site of the Government farm. He regarded the land as having been held in clan ownership.)

Evidence of Dr. H. A. Boedeker (regarding 1896) (*Evidence*, p. 695):—

"We marched in a straight line to the Nairobi River and camped at the present causeway where the Limuru Road begins, which was then dense forest, which began at that point. After leaving the last camp, there was no sign of cultivation until we reached the place where the Scott Laboratory now stands. We saw a very few Kikuyu huts on both sides of the road, but on approaching Fort Smith the huts began to increase in numbers and there were more signs of cultivation. There was a good deal of forest on both sides of the road; not continuous, but in patches. Where the Kabete Veterinary Laboratory now is was all open grazing land, which was being grazed by Kikuyu people round there."

Evidence of Omar Mohamed, a Bajun (*Evidence*, p. 1865):—

"When we came up from Mombasa we knew Fort Smith. The Masai had not reached Fort Smith. Nairobi in the old days was Masai country up to Ngong. Near to Fort Smith we found Kikuyu. . . . There were a lot of *shambas* at Fort Smith."

Summary of points in a letter written by Mrs. Hinde, widow of Mr. S. L. Hinde, at one time a Provincial Commissioner:—

"In 1898, the forest extended, and was actual forest, to the Parklands side of the Nairobi River; there were also a considerable number of trees on the Nairobi River side. The first stretch of the road to Fort Smith was through part of this forest, and there was also forest between Fort Smith and Ngong, sparse on the Fort Smith side but fairly dense from Dagoretti on and between Ngong and Nairobi. The forest was irregular in patches, and it had always been the right of the Masai to graze their cattle along the edges of the forest during the dry weather when there was not sufficient grass on the plains.

APPENDIX I—*contd.*

Since the Kikuyu had, in those days, their villages and their cultivation in the forest (for fear of the Masai raids), clashes during the drought were frequent. These were stopped, and the position was regulated by the partition of the land and the definite boundaries fixed. The Masai retained their right over certain stretches of the forest—the outer fringe. The boundary was very uneven, but it was accepted by Lenana for the Masai and by Kinanjui for the Kikuyu, and it was honourably kept.

“Ngong in 1898 was undisputed Masai territory; the Wanderobo were not hunting there, as the game was easily approached, which was never the case in regions where the Wanderobo were hunting.”

SECTION H.

ON THE EASTERN FRONTIER.

(Referring to Sections 163-214 of the Report.)

Evidence of Mr. F. W. Isaac (regarding 1892) (*Evidence*):—

“There was nothing at all on the Athi Plains. They had all been wiped out with smallpox. It was absolutely bare. There was nothing but game.”

Extract from letter from District Commissioner, Kiambu, No. 346/21/13 of April, 1913, to the District Commissioner, Fort Hall:—

“... Some questions have arisen as to the date on which the Masai evacuated this part of the Kikuyu Reserve, and it has been suggested that Kibalabala might possibly be able to throw some light on this question. Could you very kindly obtain from him the approximate date on which the Masai used the salt-lick which is close to this station; whether he can remember the Masai herding their cattle there; or how it was they gave it up. Any information on this question I shall be grateful for.”

Letter from District Commissioner, Embu, to Provincial Commissioner, Kikuyu Province, dated 30th April, 1913:—

“Kibalabala states that the salt-lick near Kiambu was never used by the Masai, except possibly when they raided the Kikuyu. He says it was a Kikuyu salt-lick.”

Evidence of Abdulla Ambari (Swahili) (*Evidence*, p. 1865):—

“I helped build Fort Hall with Mr. Hall. . . . Going from Nairobi to Fort Hall, Ruiru was the first halt. Between Nairobi and Ruiru I did not see any people or *shambas* on the right; on the left-hand side, I saw *shambas* up on the hills. Ndarugu was the second day's halt. On the left again we saw *shambas* up on the hills; nothing on the right. The third day's halt was Punda Milia. I only saw people on the left-hand side up on the hills. On the fourth day we arrived at Fort Hall. On that day we saw people and *shambas* on both sides of the road. We crossed the Maragua. Between Punda Milia and the Maragua there were people. There were more on the left-hand side; on the right there were a few. It was before we reached Maragua.”

Evidence of Omar Mohamed (*Evidence*, p. 1865):—

“In the old days we crossed the country where Kiambu *Roma* is now. We saw Kikuyu there. There were small *shambas*—not very many of them. . . . At Kiambu it was heavy forest; the big trees had not been cut down.”

APPENDIX 1—*contd.*

Evidence of Mr. C. R. W. Lane (*Evidence*, pp. 401, 402):—

"Leaving my camp standing, I left at night and went down the valleys to what is now known as Kiambu. I took the natives by surprise, and found their cattle there. Those lands in the vicinity of Kiambu were grazed over by a few head of cattle, sheep and goats belonging to the Kikuyu. At that time the Kikuyu had very few cattle."

From the evidence of Abdulla bin Omari (*Evidence*, p. 243):—

"Returning from Fort Hall, we followed more or less the present track, only we went round by Kilimahoga (Donyo Sabuk). Karura was said by the Masai to be on their boundary with the Kikuyu. Muthaiga is Masai country. Actually, Mr. Jackson camped at Mepiran, which is near the old King's African Rifles lines beside the Power Station—about half a mile from Muthaiga. It was forest country; inside were the Kikuyu, and outside was entirely controlled by the Masai."

Evidence of Mr. C. B. Hausberg (*Evidence*, p. 391):—

"(Regarding 1899; on *safari* from Nairobi.) We followed the plain. The present road follows the Railway to Fort Hall, but we followed the plains along the base of the foothills"—in a more or less straight line from Nairobi, marching east of the present Thika Station—"The chief signs we saw of natives there were skulls and bones lying on the plain, the result of a scrap either between Masai and Wakamba or between the Masai and Kikuyu—probably the latter, I should think. From Thika we marched practically northwards for about 15 miles to Punda Milia."

Q. "What was the condition with regard to occupation of the natives there?"

A. "There was none at all."

Evidence of Mr. John Boyes (regarding 1901) (*Evidence*, p. 725):—

"The donkeys were missing . . . We went all round Parklands, looking for them, and saw no one at all—no Masai, Kikuyu, or any other natives. . . ."

Q. "Were the cattle allowed to graze in the Masai country?"

A. "No; they would only graze on the edge of the country."

Evidence of Mr. R. Weekes (regarding 1903) (*Evidence*):—

"I remember trekking from Nairobi to Fort Hall. I saw no natives at all. . . . There was little (cultivation) as far as I can remember. I would not say there was any on this side of the Maragua River."

Evidence of Lord Phillimore (regarding 1904) (*Evidence*, p. 414):—

"From the time I left Nairobi until I reached the Thika River, where there was at that time a rope and cradle crossing, I cannot remember having seen any evidence of native cultivation or native herds, and uncommonly few natives on the track, if any."

(The witness remembered that at one point he "must have been able to see a breadth of quite ten miles of country".)

Evidence of Lord Cranworth (regarding 1906) (*Evidence*, p. 479):—

"On the way from Nairobi to Fort Hall there was no cultivation on the route at all, and I do not think there was a single native. I never saw one."

APPENDIX I—*contd.*

Evidence of Rev. Dr. J. W. Arthur, O.B.E. (regarding 1908) (*Evidence*, p. 460):—

"My memory is that there was not a great deal of cultivation, especially between Thika and Fort Hall."

Q. "If a witness came before this Commission and said that in 1904 he went from Nairobi to Fort Hall and saw practically no signs of any natives until he got to the Maragua, would you think that was wrong?"

A. "I do not think it is an over-wide statement."

Extract from Memorandum by Loyal Kikuyu Patriots of South Nyeri (*Evidence*, p. 174):—

"In 1907 and 1908, the Kikuyu cattle were grazed on the following plains: Below Kiambu, Kamiti, Thika, Thuthia, and onward."

Extract from Memorandum by the Fort Hall Local Native Council (*Evidence*, p. 117):—

"The boundaries were: From the junction of Tana and Thika Rivers along the banks of the Thika River to a place called Gathithiu-ini, thence to Mururi-ini, thence to the junction of the Thika and Kabuko Rivers, thence to the junction of the Thika and Chania Rivers, thence up-stream on the Chania River to the intersection of the Fort Hall Reserve. From the junction of the Tana and Thika Rivers with the Tana River, thence following the Tana River up-stream to the South Nyeri Reserve boundary."

SECTION I.

GENERAL EVIDENCE FROM THE KIKUYU ON THE QUESTION OF THE BOUNDARIES.

The following maps illustrative of the boundaries as claimed have been reproduced opposite pages in the evidence as stated below:—

1. By Senior Chief Koinange, page 380.
2. By Mr. Johnstone Kenyatta, page 434.
3. By the Central Kikuyu Association (Mr. Harry Thuku), page 218.

General descriptions of the boundaries have also been offered by:—

Senior Chief Wambugo, *Evidence*, p. 83.

Senior Chief Koinange, *Evidence*, p. 167.

Memorandum by Nyeri Local Native Council, *Evidence*, p. 91.

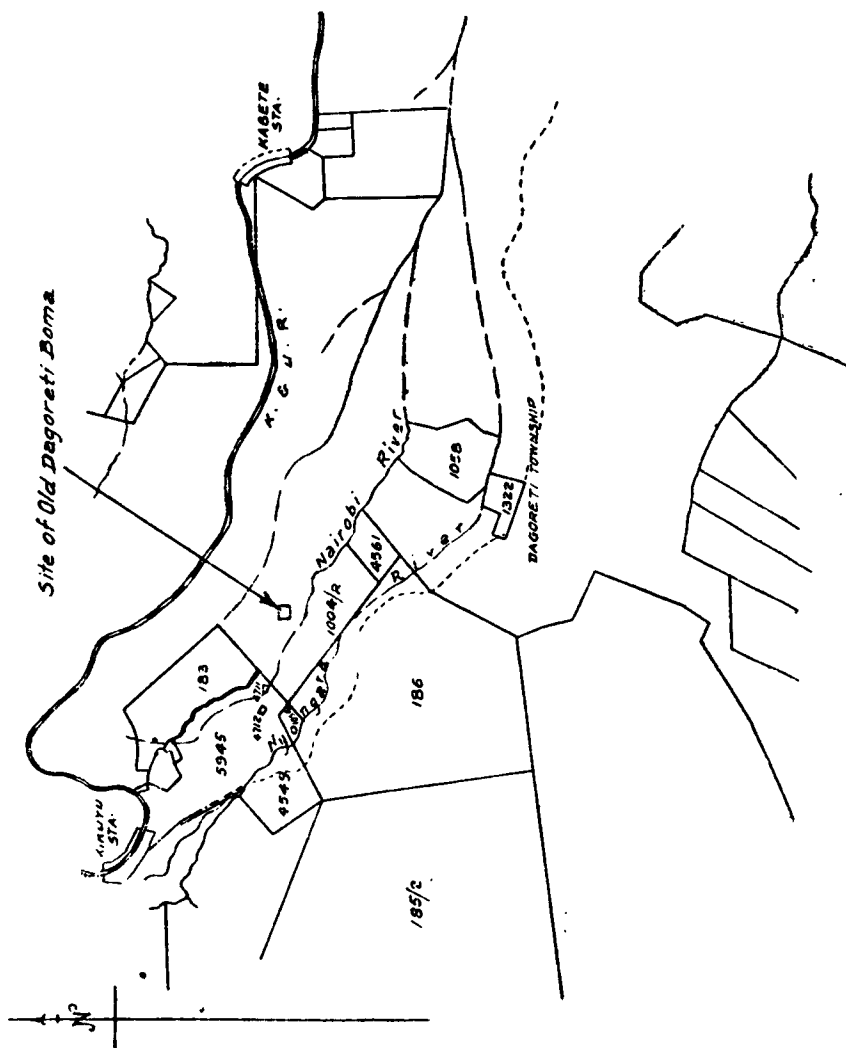
Memorandum by Progressive Kikuyu Party, *Evidence*, p. 97.

Memorandum by Fort Hall Local Native Council, *Evidence*, p. 117.

Memorandum by Loyal Kikuyu Patriots, South Nyeri, *Evidence*, p. 174.

Memorandum by Kikuyu Central Association, *Evidence*, p. 192.

(*Note*.—The general descriptions do not lend themselves to quotation in the form of extracts.)

APPENDIX 1--*contd.*

APPENDIX II

Extracts from the Crown Lands Ordinances, 1902 and 1915

From the 1902 Ordinance.

"30. In all dealings with Crown land regard shall be had to the rights and requirements of the natives, and in particular the Commissioner shall not sell or lease any land in the actual occupation of the natives.

"31. (1) The Commissioner may grant leases of areas of land containing native villages or settlements without specially excluding such villages or settlement, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

"(2) The Commissioner may allot for the purpose of native settlements or villages portions of the land so leased, and when and so long as these portions are so occupied, they shall be deemed to be excluded from the lease.

"(3) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be so occupied, pass to the lessees.

"(4) Disputes between lessees of land and natives occupying land within or near the area leased shall be referred to the Collector of the district.

"(5) Claims by lessees for reduction of rent on account of the diminution of the amount of land leased, or for other compensation on account of the exercise of the powers conferred by this section, and claims by the Commissioner for an increase of rent on account of the vacating of land formerly occupied by natives, shall be referred to the arbitration of a Judge of the High Court, under section 525 of the Indian Code of Civil Procedure.

"(6) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Collector of the district.

"(7) Either the lessee of the land or the natives, if dissatisfied with the decision of the Collector, may appeal to the Sub-Commissioner of the province, whose decision shall be final."

From the 1905 Ordinance.

"86. (1) The Governor may grant leases or areas of land containing native villages or settlements without specially excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

"(2) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be occupied, pass to the lessee:

APPENDIX II—*contd.*

Provided that the Senior Commissioner for the time being of the province in which such land is situated shall certify that the natives have ceased to occupy such land of their own will and accord without any duress on the part of the lessee.

“(3) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose shall be decided by the Senior Commissioner.

“(4) Either the lessee of the land or the natives, if dissatisfied with the decision of the Senior Commissioner, may appeal to the Governor.”

APPENDIX III

The Extent of Land now in Occupation by Missions, which has been "Taken from Kikuyu."

(The reference is to section 541 of the Report.)

The following Mission Stations fall wholly or partly within the area which we have found to have been Kikuyu Territory, but have been excluded from the native reserve:—

	Acres
1. <i>Church of Scotland Mission.</i>	
Of the 3,000 acres of the Church of Scotland Mission Station at Kikuyu, the portion which falls within the area found to have been Kikuyu territory is 2,000 acres	2,000
2. <i>Consolata Catholic Mission.</i>	
Of the Consolata Catholic Mission Station at Nyeri the portion which falls within the area found to have been Kikuyu territory is 2,227 acres, of the Consolata Catholic Mission Station at Limuru the whole (644 acres) falls within the area found to have been Kikuyu territory	2,871
3. <i>The White Sisters Mission.</i>	
Of the White Sisters Mission 5,150 acres fall within the area which we have found to have been Kikuyu territory, but is a part which we have found to have been, as to half of it, "lost by abandonment." The amount fully within the area "taken from the Kikuyu" is therefore 2,575 acres	2,575
4. <i>The White Sisters (St. Austin's Mission).</i>	
Of the St. Austin's Mission Station the part which falls within the area which we have found to have been Kikuyu territory is 374 acres	374
5. <i>The Church Missionary Society.</i>	
The Church Missionary Society's Station at Kabete falls wholly within the area which we have found to be Kikuyu territory	19
6. <i>Mission Islands in the Reserve.</i>	
(Vide section 223 (a), Item 11).	
There are several mission stations held on lease in the reserve, but these are not excluded from the reserve and are therefore not counted in this total. Only areas held on freehold are counted. They comprise L.O. 1150 (30 acres) and L.O. 1067 (32 acres), and other small areas making up the total of approximately 100 acres or 0.16 square miles	100
Total ...	7,930

APPENDIX IV

VALUATION OF AREAS

(Referring to Sections 223 and 224 of the Report.)

Concerning Items 1 and 2 of Section 223 (b).

The part of Mwea which ranks as given by Government is 174.45 square miles. We find that it is of small use for agriculture, but is passable grazing land, and we consider that, after allowing for its somewhat remote position, we can class $4\frac{1}{2}$ acres of it as being equal to 1 acre of good agricultural land of the Kiambu average. It therefore provides a set-off equivalent to 38.76 square miles of such agricultural land.

Note.—The evidence as to the value to be attached to this land is conflicting, and we have found difficulty in coming to a valuation. After considering all the circumstances, Mr. Hemsted would have set the proportion as five acres to one, and Captain Wilson (who has made a personal inspection of part of it) would put it at four to one. We have agreed to value it at $4\frac{1}{2}$ acres to 1, which the Chairman regards as a fair assessment. He is satisfied, from the evidence of Captain Grant, who has stated that the natives consider the land to be better than any land except one part, in Ukamba, together with the evidence of Mr. La Fontaine and Mr. Leckie that, in view of the fact that the Machakos district already has a population of 125 to the square mile, the area is capable of supporting a considerably larger population than that which Mr. Fazan in his evidence has attributed to it.

Concerning Item 3 of Section 223 (b).

We find that Ndeiya should be regarded as falling into four parts:—

- (a) Twelve square miles of agricultural land.
- (b) Twenty-four square miles of good to average grazing land, some of which is arable.
- (c) Eighteen square miles of second-class grazing land, but of no agricultural value.
- (d) Twenty square miles suitable for goat pasture, but indifferent for cattle.

In regard to (a).—We consider the twelve square miles of agricultural land as in other respects fit to be set off, acre for acre, against the land lost, but taking into account the difficulties about water, which have been overcome by bore-holes, and the expense of upkeep of these bore-holes, we consider that a deduction of one square mile is equitable, making the set-off value eleven square miles.

In regard to (b).—We consider a set-off of three acres of the land against one to be equitable. For purposes of set-off this area then becomes eight square miles.

In regard to (c).—We consider a set-off of eight acres of the land against one to be equitable. For purposes of set-off this land counts as 2.25 square miles.

APPENDIX IV—*contd.*

In regard to (d).—We consider a set-off of twelve acres to one to be equitable. This land therefore counts as 1.67 square miles.

The total value of Ndeiya for set-off purposes is therefore: $11 + 8 + 2.25 + 1.67 = 22.92$ square miles.

In making the above assessment we have followed Mr. S. F. Deck, Provincial Commissioner (*vide* Evidence, pp. 938-939). It is remarkable that another and independent valuation made for us agrees with Mr. Deck's total to within 0.04 of a square mile.

In regard to items 4, 5, and 6, we find that they may be reasonably set off acre for acre, since they are good agricultural land. Their total area is: 17.29 square miles.

The total set-off on the basis becomes:—

							<i>Square Miles.</i>
Mwea	...	...	...	...	...	...	38.76
Ndeiya	...	...	...	...	...	...	22.92
Items 4 to 6	...	...	...	...	...	...	17.29
							78.97

Say, 79 square miles.

This figure has to be set off against 109.50 square miles "taken by Government", and the balance of loss to the Kikuyu is thus rendered $30\frac{1}{2}$ square miles, or 19,520 acres.

APPENDIX V

Description of Blocks Recommended to be Added to the Kikuyu Native Reserve as Native Lands Class A.

(*Vide Section 466 of the Report*).

NYERI DISTRICT.

<i>Locality</i>	<i>Description</i>
1.—Nyeri Hill	As surveyed : 770 acres.
2.—Mount Kenya Forest Reserve: The tongue of forest near Chief Murigo's village.	Being the area of Forest Reserve which lies west and south west of the track which runs from the foot-bridge on the Little Homba River to the foot-bridge on the Muthira River and thence to the Forest Reserve Boundary as shown on Sheet "J" (Mt. Kenya Forest Reserve, October, 1922) : 1,125 acres.
3.—Mount Kenya Forest Reserve: Between Sagana River and Kagati Plain.	An area between the Sagana River and the Kagati Plain marked "bush and scattered trees and grass" on Sheet "J" (Mount Kenya Forest Reserve, Oct., 1922), and extending northwards till it encloses an area of approximately 500 acres, exclusive of the steep slope down to the Sagana River, which is recommended to remain in the forest reserve.
4.—Mount Kenya Forest Reserve: The Narkothi Hill Area.	An area in the Mt. Kenya Forest Reserve between Narkothi Hill and Castle Forest Station, bounded on the south by the native reserve and on the north by a line to be cut and beacons so as to enclose an area of approximately 2,000 acres.
5.—Aberdares: The Gikira River area.	An area approximately rectangular, comprising 500 acres, between beacons 196 and 197, and adjoining the reserve.
6.—In the Aberdares: Four areas in the Tusu Division.	(i) An area of approximately 350 acres south of the line adjoining beacons 179 and 178 in the Tusu District of the Aberdare Forest Reserve. (ii) An area of approximately 160 acres between beacons 183 and 185. (iii) An area of approximately 400 acres between beacons 186 and 187. (iv) An area of approximately 850 acres between beacons 189 and 196. The Commissioners make no recommendations as to the precise delimitation of the areas.

APPENDIX V—*contd.*

<i>Locality</i>	<i>Description</i>
7.—Part of L.O. 325/R, Saba Saba, Limited.	1,000 acres of L.O. 325, south of L.O. 326 ; boundaries as may be arranged. The Commissioners make no recommendations as to the precise delimitation.
8.—L.O. 1957 and 1958 near Saba Saba, Limited.	As surveyed : 893 acres.
9.—L.O. 4961	As surveyed : 669 acres.
10.—In the Aberdares : The Bathi River area.	As shown on the map illustrating the Tigoni and Kithirioni Exchange proposals at p. 24 of the printed Evidence : 1,556 acres.
11. In the Mugaga Forest area	(i) An area of approximately 1,440 acres in the north west of the Mugaga Forest Reserve, bounded on the north and west by the native reserve in the approximate position shown on the map following s. 542. (ii) An area of approximately 2,460 acres in the south-west of the Mugaga Forest Reserve, bounded on the west and south by the native reserve ; the position being approximately as shown on the map following s. 542.
12.—In the Ngubi Forest area	All the Ngubi Forest Reserve which lies south of a line starting from the point where the Limuru-Naivasha main road enters the forest reserve, and thence running in a general westerly direction south of the plantations to an unnamed hill at the south-western corner of the cedar plantations and thence north-westerly to meet the reserve boundary of the north-west corner of Forest Compartment 74 : 800 acres.
13.—In the Ngarariga area ..	A corridor from the Ngarariga Native Reserve to the main native reserve from the south-east end and running south-east, and comprising 200 acres.
14.—In the Dagoretti Forest area.	Two areas known as Riu in the north-western part of the Dagoretti Forest Reserve, adjoining the Ndenja location of the native reserve, and a corridor of approximately 100 acres joining them to the land agreed to be surrendered to the native reserve by the Church of Scotland Mission : Altogether 670 acres.
15.—Part of L.O. 185 and 186 : the Church of S. Mission.	An area of 2,000 acres, approximately as shown on the plan produced by the Mission in evidence ; the precise position to be as may be arranged between Government and the Mission.
16.—L.O. 295/2/R	Eighty acres of the White Sisters' land. As surveyed.

APPENDIX V—*contd.*

<i>Locality</i>	<i>Description</i>
17.—Part of L.O. 134/4 ..	The part which lies eastward of a line joining the south-eastern corner of L.O. 5876 with the north-eastern corner of L.O. 134/5: 250 acres.
18.—Part of the British East Africa Wattle Estate in the Dagoretti area.	As shown on the map at page 20 of the printed Evidence: 78 acres.
19.—L.O. 1322 Dagoretti ..	Dagoretti Township as surveyed: 50 acres.

The above areas comprise 18,801 acres, and there remains a balance of 2,199 acres to be made up as may be convenient, *vide* s. 430.

The boundaries of the above areas have, in several cases, been left vague, since the Commissioners wish to indicate the general locality but to leave the boundaries entirely to the discretion of Government without any special recommendation.

APPENDIX VI

A Short Description of the Githaka System

(Being a Series of Extracts from the Report of the 1929 Committee on Native Land Tenure in Kikuyu Province.)

I.—General Description of the Githaka System.

"The *Githaka* System in its integrity is simply the methods of clan and patriarchal control expressing themselves in relation to the land." (Chapter 3, para. 3.)

II.—The *Muramati*.

"The immediate control lies with a responsible person living on the *githaka*, called the *muramati* (administrator), who is usually the eldest son of the senior branch of the *mbari* resident there. . . . The *muramati* is very chary of interference with the shares of the various occupant families, but it is admitted that, if one family were to diminish and another to increase abnormally, in the last resort, after consultation with the group and the members affected, he has powers of readjustment." (Chapter 1, paras. 19-23.)

"It is stated that, when the tribal system is intact, the *aramati* hold an important and special position in providing the people with their natural leaders and rulers, and that their disappearance, which would be the natural result of subdivision, would aggravate the problem which is created by the fact that 'the young men as a class have ceased to respect their elders'." (Chapter 3, para. 31.)

III.—General Efficiency of the Githaka System.

It is represented as being the greatest possible tribute to the *Githaka* System that "there are several places in the Nyeri and Fort Hall districts where one may stand and see more than a thousand acres at a stretch with scarcely an acre uncultivated, and the disputes which occur, though complicated and troublesome, are surprisingly few." (Chapter 1, para. 22.)

Note.—On the other hand, evidence given to the Commission indicates that disputes are far more frequent than they used to be, and that far too much time and money is spent in litigation.

IV.—Disintegrating Tendencies in Kiambu District.

"The Kikuyu of Kiambu district have definitely departed from normal Kikuyu custom and admit the sale outright either of a whole *githaka* or a part of a *githaka*. If the present tendencies were to continue unchecked for another generation, it may be conjectured that in this area the *githaka* would by that time have given place to the small holding as the unit of land tenure. . . . Subdivision is in full swing, and though we have not yet got to the individual family (man, wife, and children), and to the small holding . . . definite progress has been made in that direction." (Chapter 1, paras. 25, 29.)

Note.—In all districts of the province, except Kiambu, this disintegration of *ithaka* is prevented by the device of redeemability (Chapter 1, para. 23).

APPENDIX VI—*contd.*V.—*The Position of Tenants.*

“ Tenants (*ahoi*) have no security in theory and may be evicted at will. Hitherto, this has been tempered in practice by the basis of friendship on which the whole transaction rests. As the commercial spirit grows, the basis of friendship and quasi-feudal dependence disappears, and the position of tenants becomes precarious.”

VI.—*Native Aspirations.*

“ Native opinion appears to be united in considering that the cardinal point is that *ithaka* shall be recognized:—

“ (a) That owning *mbari* shall be secure in the possession of their land both for the present and for the future.

“ (b) That disputes arising shall be settled with due regard for and due knowledge of native law and custom.

“ It is, however, not impossible that in the Kiambu area some of the more sophisticated natives join with these objects another which is not on all-fours with them, namely, the hope that registration will tend to confirm the ‘owner’ in the absolute proprietorship of land and facilitate transactions of buying and selling, and they probably have in view the development of private ownership with full title.” (Chapter 1, para. 35.)

VII.—*Individualism and the Githaka System.*

“ When we observe an evolution in progress which is tending more and more in the direction of individual tenure and away from the controls of tribalism, we shall conclude that, although the process may mark an advance, it is not a ratification of the *Githaka* System, but a departure from it.” (Chapter 3, para. 3.)

VIII.—*Causes of Evolution towards Individualism.*

“ The principal causes of the evolution towards individualism are stated to be: (a) The fixation of boundaries; (b) The growth of population; (c) Money; and (d) Permanent crops.” (Chapter 3, paras. 4-8.)

IX.—*Modern Requirements to which the Githaka System is Ill-adapted.*

A formidable list of modern requirements is given to which the *Githaka* System is stated to be unsuited. It comprises: Townships, trading centres, permanent buildings, requirements of social service, the proper use of grazing, proper security for tenants, and the development of small holdings. It is not suggested in the Report that these things cannot exist under the *Githaka* System, but it is stated that difficulties arise in reconciling the *Githaka* System with them. (Chapter 3, para. 9 *et seq.*)

APPENDIX VII

The Method of Tenure for School and Church Plots in the Kikuyu Reserve

(Note.—This Appendix has been written at the request of the Commissioners by Mr. Fazan. Vide section 1543 of the Report.)

Plots for Mission Schools and Churches.

The Director of Education has pointed out in his evidence that the initial impetus in starting a school generally comes from the natives. Somebody builds a building generally on his own *githaka*, and invites a mission to take it over as a school. In these initial stages the mission is prepared to accept the position that it has no rights in the land, and that the local body of its African adherents has only such rights as native law and custom allow. In process of time complications may arise, and have in fact arisen in many cases. The *githaka* holder may die, and his successor may be less well-disposed to the mission. Or some question may arise as to the inheritance of the property, or there may be a dispute about church doctrine. In any case a time comes when some greater security of tenure is felt to be required.

The first point of disagreement now arises. What should next be done? The administrative officers of the province favour the proposal, in respect of a school as apart from a church, that there should be two alternative courses open to the Native Council:—

- (i) To set apart a plot, on which the Council would build and own the buildings, and the mission would only have a teacher's contract.
- (ii) To set apart a plot and then lease it to the mission or to a corporate body of its adherents for the purpose of a school to be conducted by the mission.

In either case the work of compensating the right-holder would devolve on the Council, but in the second case it would reimburse itself from rent.

The Director of Education expressed the opinion that the first of these alternatives, if accepted, would tend to commit Government to a policy of State education, a consideration which must not be allowed to depend on a land issue. Mr. Dougall, Educational Adviser to Protestant Missions, agreed with him. Mr. Calderwood, representing the Church of Scotland Mission, agreed as to the tendency but recommended the course in spite of it. (Evidence, pp. 2994.)

It is agreed on all hands that there is a serious objection to the method by which the Native Council builds and owns the buildings, because the school may also be used as a church. The proposal of Mr. Calderwood, speaking as one of the delegates of the Kenya Missionary Council, was that in such a case a corner of the plot should be leased or set apart on special terms to the African adherents of the mission as a church plot while the remainder would be set apart for

APPENDIX VII—*contd.*

a school. But this course would heavily compromise the Council if ever it should desire to make a change in its teaching arrangements and give the contract to another institution.

In regard to the method of lease, to which the Director of Education sees no objection so far as his Department is concerned, the views of the Missionary Council are that, while at present missions are not likely to avail themselves of it on account of the native opposition to be expected, it might be found that their local native adherents, after forming themselves into a corporate body with a recognized method of succession, could obtain a lease without incurring odium. I understand that in such case there would be no objection if the part of the plot which is leased as a school and the part leased as a church should carry separate conditions, a course which has been recommended by a resolution of the Kiambu School Area Committee.

The delegates of the Kenya Missionary Council have suggested that something simpler than a lease should be devised, and that at all events there should be no need for survey. Moreover they point out that the right-holder would often prefer to receive no compensation, and they suggest that the full economic rental as provided in section 10 of the ordinance should not be required.

A system exists in the Nyeri District by which the Native Council has set aside plots after agreement with the right-holders, who in most cases have agreed to forgo any compensation. The plot has then been allocated to a mission as a combined school and church plot, and a resolution of the council exists declaring that, if after three years' trial the school is held to be fulfilling a useful function, the right-holder should cease to have any power to evict. This system is said by the District Commissioner to be working well.

In regard to the Kiambu District, yet another method has been suggested. Mr. Calderwood proposes that, since outright sale is admitted by native custom in that district, the native adherents of a mission in any locality should be able to buy land for school purposes without approaching the Local Native Council. He agreed that, if the consent of the Provincial Commissioner should be made necessary before a sale under native custom is recognized, it would probably be a useful administrative practice that such consent should not be given unless the applicants had enrolled themselves as a corporate body with a recognized method of succession.

I have been asked to give my own conclusions, and shall now do so. In reaching them I have been guided not only by the evidence and memoranda, but also by records contained in the minutes of Local Native Council meetings and School Area Committee meetings.

The Initial Stage.—I agree with the general opinion that with very small schools the buildings should be held to belong to the native adherents and that no security is required beyond what native custom affords to a tenant.

APPENDIX VII—*contd.*

The Stage when more Security is required.—Altogether five methods have been proposed:—

(i) Setting the plot apart, the Native Council arranging to compensate the right-holder, generally by an annual compensation resembling a rent, whereafter the Council would build such buildings as are required, and give the teaching contract to a mission.

I agree with the objection that this method, if made general, would very probably lead to State education, and therefore do not think it satisfactory except perhaps in a few particular instances. I also agree that practical complications would arise, especially in regard to churches. The method therefore is not generally to be recommended.

(ii) Setting the plot apart in the same way as above, but with the difference that the Council does not build the buildings itself, but permits a mission or the local adherents of the mission to build them, and the right-holder cannot evict after the first three years.

If nothing is paid to the right-holder, it is obvious that the arrangement can only be made with his consent. If he requires payment, especially in the form of annual compensation, which would have to be recovered from the mission, the method is practically indistinguishable from lease.

So long as the right-holders are content and the method suits the requirements of the district (Nyeri) where it is found, there is much to be said for it. But it does not appear by what right the Council can declare that the right-holder may not evict after three years, especially if he has received no compensation. The method appears likely to break down as soon as it is seriously challenged.

(iii) Setting the plot apart and then leasing it to a mission or to a corporate body of mission adherents. The Local Native Council would compensate the right-holder by an initial "sweetener" and annual compensation, and would reimburse itself from the rents.

Apart from the native objections this method appears to be perfectly sound. The Native Council is practically only the go-between or guarantor between the lessee and the right-holder.

A simple method of marking-out could easily be devised, and there is no need for survey. I see no reason why the right-holder should be required to accept anything less in compensation than the full economic rental of the land, but, if he wishes to be generous, he is at liberty to return it.

I do not think that native prejudices should be allowed to stand in the way. A lease is perfectly fair and is the method of tenure contemplated in the ordinance. While some missions may desire to avoid unpopularity by arranging for their native adherents rather than the governing body to apply for the lease, there are probably other missions which would not agree. No principle of land tenure is involved in the issue, and I see no reason why the same method of lease should not be applied uniformly whether the applicants are white or black.

APPENDIX VII—*contd.*

(iv) The same as No. 3 above, but distinguishing between schools and churches, the lease being in two sections carrying different conditions.

The proposal is supported by a resolution of the Kiambu School Area Committee and appears to be generally sound. It is interesting to note that a similar provision was made by the Government of the Cape Province of the Union of South Africa in 1909:—

“In 1909 the Cape Government decided that applications for joint church and school purposes would not be considered, but that sites would be approved for the single purpose—church or school—only” (extract from a Government memorandum entitled “Occupation of Church, School and Mission Sites in Native Areas”; 1918).

(v) The proposal that in the Kiambu District the native adherents of a mission should be able to form themselves into a corporate body and buy land for a church or a school, subject to the approval of the Provincial Commissioner.

I see no reason why the proposal should not be considered, but I find no record of any discussion on the point, and therefore prefer to give no opinion. As the sum total of the whole matter, I consider that lease is the proper method, and should be applied wherever possible, and native opinion should be educated to that end. Meanwhile other expedients may be justified upon occasion.

I have dealt with this question at some length because of the difficulties which have been experienced.

APPENDIX VIII

THE MASAI AGREEMENTS

(Referring to Sections 645 and 650 of the Report.)

AGREEMENT, DATED 10TH AUGUST, 1904, BETWEEN HIS
MAJESTY'S COMMISSIONER FOR THE EAST AFRICA
PROTECTORATE AND THE CHIEFS OF THE MASAI
TRIBE.

We, the undersigned, being the Lybon Chiefs (representatives) of the existing clans and sections of the Masai tribes in the East Africa Protectorate, having this 9th day of August, 1904, met Sir Donald Stewart, His Majesty's Commissioner for the East Africa Protectorate and discussed fully the question of a land settlement scheme for the Masai, have of our own free will, decided that it is for our best interests to remove our people, flocks and herds into definite reservations away from the railway line, and away from any land that may be thrown open to European settlement.

We have, after having already discussed the matter with Mr. Hobley at Naivasha and Mr. Ainsworth at Nairobi, given this matter every consideration, and we recognize that the Government, in taking up this question, are taking into consideration our best interests.

Now we, being fully satisfied that the proposals for our removal to definite and final reserves are for the undoubted good of our race, have agreed as follows:—

That the Elburgu, Gekunuki, Loita, Damat and Laitutok sections shall remove absolutely to Laikipia, and the boundaries of the settlement shall be, approximately, as follows:—

On the north, by the Loroghi Mountains.

On the west, by the Laikipia (Ndoror) Escarpment.

On the south, by the Lesuswa or Nyam and Guaso Narok Rivers.

On the east, by Kisima (approximate).

And by the removal of the foregoing sections to the reserve we undertake to vacate the whole of the Rift Valley, to be used by the Government for the purposes of European settlement. Further, that the Kaptei, Matapatu, Ndogalani and Sigarari sections shall remove into the territory originally occupied by them to the south of Donyo Lamuyu (Ngongo), and the Kiscarian stream, and to comprise within the area the Donyo Lamuyu, Ndogalani, and Matapatu Mountains, and the Donyo Narok, and to extend to Sosian on the west.

In addition to the foregoing, Lenana, as Chief Lybon, and his successors, to be allowed to occupy the land lying in between the Mbagathi and Kiscarian streams from Donyo Lamuyu to the point where both streams meet, with the exception of land already occupied by Mr. Oulton, Mr. McQueen, and Mr. Paterson.

APPENDIX VIII—*contd.*

In addition to the foregoing, we ask that a right of road to include certain access to water be granted to us to allow of our keeping up communications between the two reserved areas, and, further, that we be allowed to retain control of at least five square miles of land (at a point on the slopes of Kinangop to be pointed out by Legalishu and Masakondi), whereat we can carry out our circumcision rites and ceremonies, in accordance with the custom of our ancestors.

We ask, as a most important point in this arrangement, that the Government will establish and maintain a station on Laikipia, and that officers whom we know and trust may be appointed to look after us there.

Also that the Government will pay reasonable compensation for any Masai cultivation at present existing near Nairobi.

In conclusion, we wish to state that we are quite satisfied with the foregoing arrangement, and we bind ourselves and our successors, as well as our people, to observe them.

We would, however, ask that the settlement now arrived at shall be enduring so long as the Masai as a race shall exist, and that European or other settlers shall not be allowed to take up land in the Settlements.

In confirmation of this Agreement, which has been read and fully explained to us, we hereby set our marks against our names as under:—

Lenana, Son of Mbatian, Lybon of all the Masai.

Masakondi, Son of Aruriu, Lybon at Naivasha.

Signed at Nairobi, 15th August, 1904:—

Lemani, Elumura of Matapatu.

Leteregi, Elumura of Matapatu.

Lelmurua, Elumura of Ndogalani.

Lakombe, Elumura of Ndogalani.

Lisiari, Elumura of Ndogalani.

Mepaku, Head Elmoran of Matapatu.

Lambari, Leganon of Ndogalani.

Naivasha, representing Elburgu, Gekunuki, Loita, Damat and Laitutok:—

Legalishu, Leganan of Elburgu.

Olmugeza, Leganan of Elburgu.

Olainomodo, Leganan of Elburgu.

Olotogia, Leganan of Elburgu.

Olieti, Leganan of Elburgu.

Lanairugu, Leganan of Elburgu.

Lingaldu, Leganan of Elburgu.

Ginomun, Leganan of Elburgu.

Liwala, Leganan of Gekunuki.

Lembogi, Leganan of Laitutok.

APPENDIX VIII—*contd.*

Signed at Nairobi, 15th August, 1904:—

Sabori, Elmura of Elburgu.

We, the undersigned, were interpreters in this Agreement:—

C. W. Hobley (Swahili).

Mwe s/o Lithugu (Masai).

Lybich s/o Keretu (Masai).

Waziri bin Mwynbego (Masai).

I, Donald Stewart, K.C.M.G., His Majesty's Commissioner for the East Africa Protectorate, hereby agree to the foregoing, provided the Secretary of State approves of the Agreement, and in witness thereof I have this 10th day of August, 1904, set my hand and seal.

D. Stewart.

We, the undersigned officers of the East Africa Protectorate Administration, hereby certify that we were present at the meeting between His Majesty's Commissioner and the Masai at Naivasha on the 9th August, 1904, and we further heard this document fully explained to them, and witnessed their marks affixed to same:—

C. W. Hobley, Acting Deputy Commissioner.

John Ainsworth, His Majesty's Sub-Commissioner,
Ukamba.

S. S. Bagge, H.M. Sub-Commissioner, Kisumu.

J. W. T. McClellan, Acting Sub-Commissioner, Naivasha.

W. J. Monson, Acting Secretary to the Administration.

I, Donald Stewart, K.C.M.G., His Majesty's Commissioner for the East Africa Protectorate, hereby further agree to the foregoing parts of this Agreement concerning Kapte, Matapatu, Ndogalani and Sigarari Masai, provided the Secretary of State approves of the Agreement, and in witness thereof I have this 15th day of August, 1904, set my hand and seal.

D. Stewart.

We, the undersigned officers of the East Africa Protectorate, hereby certify that we were present at the meeting between His Majesty's Commissioner and the Masai at Nairobi on the 15th August, 1904, and we further heard this document explained to them, and witnessed their marks affixed to same:—

C. W. Hobley, Acting Deputy Commissioner.

John Ainsworth, His Majesty's Sub-Commissioner,
Ukamba.

T. T. Gilkison, Actfng Land Officer.

W. J. Monson, Acting Secretary to the Administration.

I, the undersigned, hereby certify that I translated the contents of this document to the Masai Lybich, who, I believe, interpreted it correctly to the Masai assembled at both Naivasha and Nairobi.

John Ainsworth, His Majesty's Sub-Commissioner.

APPENDIX VIII—*contd.*

AGREEMENT OF 1911.

AGREEMENT,

We, the undersigned, being the Paramount Chief of all the Masai and his regents and the representatives of that portion of the Masai tribe living in the Northern Masai Reserve, as defined in the agreement entered into with the late Sir Donald William Stewart, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, His Majesty's Commissioner for the East Africa Protectorate, on the ninth day of August, One thousand nine hundred and four, and more particularly set out in the Proclamation of May thirtieth, One thousand nine hundred and six, and published in the Official Gazette of June first, One thousand nine hundred and six, do hereby on our own behalf and on behalf of our people, whose representatives we are, being satisfied that it is to the best interest of their tribe that the Masai people should inhabit one area and should not be divided into two sections as must arise under the agreement aforesaid whereby there were reserved to the Masai tribe two separate and distinct areas of land, enter of our own free will into the following agreement with Sir Edouard Percy Cranwill Girouard, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Member of the Distinguished Service Order, Governor and Commander-in-Chief of the East Africa Protectorate, hereinafter referred to as "the Governor":

We agree to vacate at such time as the Governor may direct the Northern Masai Reserve which we have hitherto inhabited and occupied and to remove by such routes as the Governor may notify to us our people, herds and flocks to such area on the south side of the Uganda Railway as the Governor may locate to us the said area being bounded approximately as follows, and as shown on the attached map:—

On the south by the Anglo-German frontier.

On the west by the Ol-orukoti Range, by the Amala River, otherwise called Ang-are-dabash or Eng-are-e-'n-gipai, by the eastern and northern boundaries of the Sotik Native Reserve, and by a line drawn from the most northerly point of the northern boundary of the Sotik Native Reserve to the south-western boundary of the land set aside for Mr. E. Powys Cobb, on Mau;

On the north by the southern and eastern boundaries of the said land set aside for Mr. E. Powys Cobb, and by a straight line drawn from the north-eastern boundary of the said land to the highest point of Mount Suswa, otherwise called Ol-doinyo-Onyoke;

On the east by the Southern Masai Native Reserve, as defined in the Proclamation dated June eighteenth, One thousand nine hundred and six, and published in the Official Gazette of July first, One thousand nine hundred and six.

Provided that nothing in this agreement contained shall be deemed to deprive the Masai tribe of the rights reserved to it under the agreement of the August ninth, One thousand nine hundred and four afore-

APPENDIX VIII—*contd.*

said to the land on the slopes of Kinangop whereon the circumcision rites and ceremonies may be held.

In witness whereof and in confirmation of this agreement which has been fully explained to us we hereby set our marks against our names as under:—

Mark of *Segi*, Son of Ol-onana (Lenana), Paramount Chief of all the Masai.

Mark of *Ol-le-Gelesho* (Legalishu), Regent during the minority of Segi, head of the Molcylan Clan, and chief spokesman (Ol-aigwenani) of the Il-Kitoip (Il-Merisho) age grade of the Purko Masai.

Mark of *Ngaroya*, Regent during the minority of Segi, of the Aiser Clan.

Mark of *Ol-le-Yeli*, head of the Mokesen Clan of the Purko Masai, and one of the spokesmen (Ol-aigwenani) of the Il-Kitoip (Il-Merisho) age grade of the Purko Masai.

Mark of *Ol-le-Turere*, head of the Mokesen Clan of the Purko Masai.

Mark of *Ole-le-Malit*, one of Masikondi's representatives, of the Lughumae branch of the Aiser Clan of the Purko Masai.

Mark of *Ol-le-Matipe*, one of Masikondi's representatives, of the Lughumae branch of the Aiser Clan of the Purko Masai.

Mark of *Ol-le-Nakola*, head of the Tarosero Clan of the Purko Masai.

Mark of *Ol-le-Naigisa*, head of the Aiser Clan of the Purko Masai.

Mark of *Marmaroi*, uncle and personal attendant of Segi.

Mark of *Saburi*, the Prime Minister of the late Chief Ol-onana (Lenana), and principal elder of the Southern Masai Reserve.

Mark of *Agali*, uncle of Segi, representing the Loita Masai.

Mark of *Ol-l-l-Tanyai*, of the Tarosero Clan, chief spokesman (Ol-aigwenani) of the Lemek (Meitaroni) age grade of the Purko Masai.

The above set their marks to this agreement at Nairobi on the fourth day of April, nineteen hundred and eleven.

A. C. Hollis, Secretary, Native Affairs.

Ole-le Masikondi, head of the Lughumae section of the Aiser Clan, chief elder of the Purko Masai, called in the former treaty Ol-Oboni of the Purko Masai.

Ole-le-Batiet, head of the Aiser Clan of the Purko Masai on Laikipia, Ol aigwenani of the age known as Il Merisho.

APPENDIX VIII—*contd.*

The above set their marks to this agreement at Rumuruti on the 13th day of April, 1911.

E. D. Browne, Assist. District Commissioner, Laikipia.

Witness: *A. J. M. Collyer*, District Commissioner, Laikipia.

His mark: *Ol-le-Lengiri*, of the Aiser Clan, Purko Masai.

His mark: *Ol-le-Gesheen*, head of Tamosero Clan of Purko Masai.

His mark: *Ol-le-Salon*, brother of *Ol-le-Kitokosh*, as a deputy for *Ol-le-Kitokosh*.

The above set their marks to this agreement at Rumuruti on the 19th day of April, 1911.

E. D. Browne, Assist. District Commissioner, Laikipia.

We, the undersigned, certify that we correctly interpreted this document to the chiefs, regents and representatives of the Masai who were present at the meeting at Nairobi.

A. C. Hollis, Secretary, Native Affairs.

Ol-le-Tinka, of the Il-Aiser Clan.

We, the undersigned, certify that we correctly interpreted this document to the representatives of the Masai at Rumuruti.

A. J. M. Collyer, District Commissioner.

Ol-le-Tinka (his mark).

In consideration of the above, I, Edouard Percy Cranwill Girouard, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Member of the Distinguished Service Order, Governor and Commander-in-Chief of the East Africa Protectorate, agree on behalf of His Majesty's Government, but subject to the approval of His Majesty's Principal Secretary of State for the Colonies to reserve for the exclusive use of the Masai tribe the area on the south side of the Uganda Railway as defined above and as shown on the attached map, which area is coadunate with the Southern Masai Native Reserve and to further extend the existing Southern Masai Native Reserve by an addition of an area of approximately three thousand and one hundred square miles, such area as shown on the accompanying map the approximate boundaries being on the south, the Anglo-German Frontier, on the west the eastern boundary of the aforesaid Southern Masai Reserve; on the north and east by the Uganda Railway zone from the Athi River to Sultan Hamud railway station, thence in a line drawn from the said station to the north-west point of the Chiulu Range, thence along the Chiulu Range to the south-eastern extremity thereof, thence by a straight line to the meeting point of the Eng-are Rongai and the Tsavo Rivers, thence by the Eng-are Rongai River to the Anglo-German Frontier; and to undertake on behalf of His Majesty's Government to endeavour to remove all European settlers from the said areas and not to lease or grant any land within the said areas (except such land as may be required for mining purposes or for any public purpose) without the sanction of the paramount chief and the representatives of the Masai tribe.

APPENDIX VIII—*contd.*

In witness whereof I have hereunto set my hand and official seal this twenty-sixth day of April, One thousand nine hundred and eleven.

(L.S.)

Signed, sealed and delivered by the within-named Sir Edouard Percy Cranwill Girouard, in the presence of A. C. Hollis.

E. P. C. Girouard.

We, the undersigned, were present at a meeting between His Excellency the Governor and the Masai at Nairobi on the fourth day of April, One thousand nine hundred and eleven, and we heard this document explained to the chief and the representatives of the Masai, who entered into this agreement of their own free will and with full knowledge of the contents thereof.

R. M. Combe, Crown Advocate.

C. W. Hobley, Provincial Commissioner, Ukamba.

John Ainsworth, Provincial Commissioner, Nyanza.

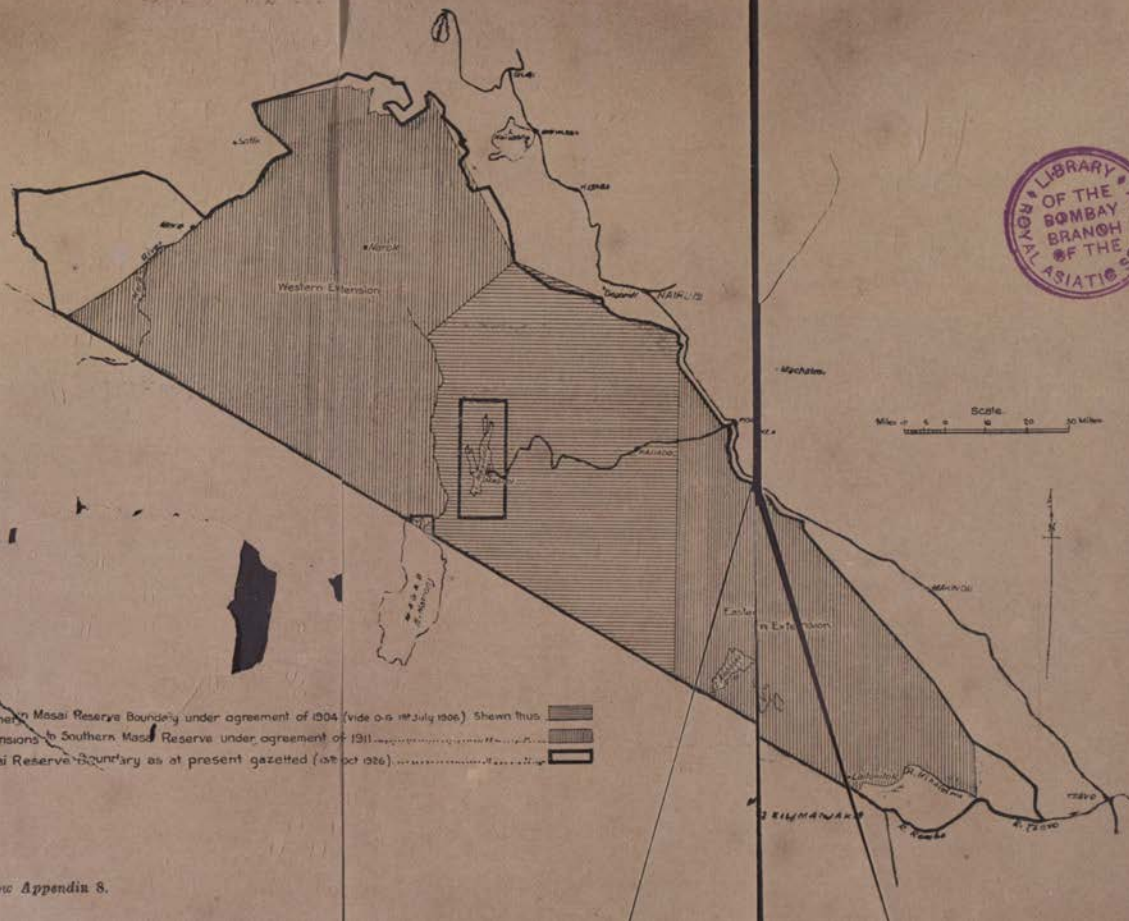
C. R. W. Lane, Provincial Commissioner, Naivasha.

S. L. Hinde, Provincial Commissioner, Naivasha.

J. W. T. McClellan, Provincial Commissioner, Kenya.

A. C. Hollis, Secretary for Native Affairs.

C. C. Bowring, Treasurer and M.L.C.



APPENDIX IX

Rainfall Records for Solai, Nakuru and Kabarnet

(Referring to Section 961 of the Report).

	Solai	Nakuru	Kabarnet
<i>Year</i>	<i>Inches</i>	<i>Inches</i>	<i>Inches</i>
1914	..	38.16	...
1915	..	35.61	..
1916	56.88	44.68	80.84
1917	60.65	68.21	92.41
1918	32.21	24.49	24.12
1919	44.52	40.92	53.76
1920	..	38.53	44.65
1921	..	25.62	40.50
1922	42.83	34.67	48.25
1923	47.48	44.75	67.85
1924	37.14	29.05	39.96
1925	38.64	26.45	44.85
1926	49.68	36.21	66.21
1927	26.03	25.60	32.44
1928	30.29	28.96	36.24
1929	40.68	28.22	42.00
1930	52.15	50.89	55.76
1931	31.64	34.14	43.80
1932	45.41	38.94	44.24

APPENDIX X

Extracts from Official Reports concerning the Effects of the Present (1933) Drought

(Referring to section 1991 of the Report.)

KIKUYU PROVINCE.

Extract from a report dated 13th June, 1933, from District Commissioner, Nyeri.

In South Nyeri the position is briefly as follows:—

- (a) No mortality worth mention has occurred in the native stock.
- (b) The condition of grazing could hardly be worse: it is eaten down to the ground or dried up and withered.
- (c) Natives are feeding banana stems extensively to their stock to supplement grazing.
- (d) There is no milk supply at all.

Extract from a report dated 21st June, 1933, from Agricultural Officer, Fort Hall.

In all the higher locations the grazing, though drying up badly, is adequate for the present.

In the lower locations the position is more serious, particularly in Ndamaiyu's. No deaths of stock due to starvation have been reported, but it is thought that, even if good rains fall in the near future, the grass has suffered too much to make any rapid growth, and the grazing will be inadequate to support the head of stock. If the rains do not break soon and no stock are moved from this location, the mortality will be very heavy.

The position in Kigwaine's, though not so serious as in Ndamaiyu's location, is causing grave concern, and unless good rains fall within the next few weeks, mortality of stock will be considerable.

In the intermediate locations, as Waweru's, the position though less serious is sufficient to cause some concern.

Extract from a report dated 17th June, 1933, from District Commissioner, Kiambu.

There is at present a serious shortage of grazing in this reserve and the situation is aggravated considerably by the lack of water in the Nde'ya grazing area.

Up to the present no extensive mortality has been reported but when the stock is in poor condition as at present, it is usual for some enzootic disease or other to take hold and cause serious mortality.

From what I have seen of this reserve. I am left with the impression that it must be seriously overstocked even in normal seasons.

APPENDIX X—*contd.*

Extract from a report dated 26th June, 1933, from District Commissioner, Embu.

In this district to date there has been no mortality amongst stock of a serious nature.

It can be said that there is no fear of a serious mortality as yet.

Report dated 20th June, 1933, from the District Commissioner, Meru.

Grazing in this district is rapidly becoming scarce and a serious shortage will undoubtedly be felt by native stock-owners in the near future.

No mortality has as yet occurred.

MASAI PROVINCE.

Extract from a report dated 15th June, 1933, from District Commissioner, Narok.

The present state of this district is drier than I have ever seen it at the end of the dry weather. The furrow which supplies Narok Station with water is dry, and rivers such as the Mara are reduced to the merest trickles.

Grazing is almost non-existent.

Up to date there has, I think, been very little mortality among the stock from starvation, but this is now beginning and if we only get 3.9 inches of rain within the next four months (which is the average rainfall for the months of July, August, September and October over a period of ten years) I am afraid the mortality amongst stock will be very considerable.

Rain has fallen in the Trans Mara country and I do not anticipate that this area will suffer from the drought.

Extract from a report dated 14th June, 1933, from District Commissioner, Kajiado.

The stock of this district are generally speaking still in fair condition owing to good rains in January, grazing, however, is becoming scarce throughout the district.

Mortality from starvation is expected to increase steadily up to a figure of at least two thousand a month until the arrival of the short rains.

Extract from a report dated 23rd June, 1933, from the Acting Provincial Commissioner, Ngong.

A deputation has been received to-day from the Kekonyukie living in the neighbourhood of Weiwei and the Kedong.

They state that their grazing is becoming so exhausted owing to the drought, that heavy mortality amongst their cattle is expected.

APPENDIX X—*contd.*

KAMBA PROVINCE.

Extract from a report dated 16th June, 1933, from District Commissioner, Machakos.

The effects of the drought upon grazing in most of the locations of the Ulu Reserve are becoming serious, but at the moment I do not anticipate that there will be much general mortality among stock due to starvation.

Large numbers of cattle have been and are still being moved to the Yatta, where grazing is plentiful . . .

Extract from a report dated 17th June, 1933, from District Commissioner, Kitui.

So far no information has been received of the mortality of any stock in the Kitui Reserve due to the drought, but there is a decided shortage of grazing . . .

I am, however, emphatically of the opinion that the district is not normally overstocked, nor are the people wealthy in cattle or goats.

NORTHERN FRONTIER PROVINCE.

Extract from a report dated 27th June, 1933, from Provincial Commissioner.

At the moment the Leroki Plateau area is as bare as it was in 1929 and I am in the same position as was Mr. R. W. Hemsted then in being compelled to allow the Samburu cattle to graze on the south bank of the Uaso. Naturally, I have not allowed their villages to cross. Though the losses in cattle at the moment are not too heavy, they will probably become exceedingly so as the drought continues. It is true that such mortality aids overstocking but I doubt if the Samburu have more stock than necessary for their existence, due regard being given to the nature of the area in which they have to live. I wish that the Land Commission could visit it now.

TURKANA PROVINCE.

Extract from a report dated 18th July, 1933, from the Provincial Commissioner.

When mortality amongst stock is caused by lack of grazing, it reduces the head to a number which is always slightly in excess of the carrying capacity of the pasture available at the time. This number increases if the pasture improves and so the evils of over-grazing remain, and the improvement which will be of short duration gives place eventually to even more deplorable conditions than those obtaining before . . . It is only when stock are killed off by disease (see recent reports by Professor Swynnerton on the tsetse fly) to such an extent that their numbers drop considerably below the grazing capacity of the area that the pasturage is given the chance to recover . . . We must therefore expect a very serious depreciation of

APPENDIX X—*contd.*

the grazing in Turkana during the next few years. This if unchecked will gradually cause to set in the desert conditions which are already to be observed in some parts of Turkana and compel the remaining population to concentrate on the banks of the rivers . . . Have we any reason to suppose that the forces of nature which gave rise to the Sahara and caused the once pastoral peoples who inhabited that area to pass in the course of many generations into the fellahin of Egypt and the Lower Nile will not continue to act in the same manner?

If we accept this principle then we must:—

- (a) Hasten the process of agriculturization and lessen the hardship of the transitional stage.
- (b) Take active steps against these processes by reconditioning and control of stock.

Whichever we do, nature will in the end win.

Extract from a report dated 20th June, 1933, from District Commissioner, West Suk.

I have just returned from a *safari* to Sook location which is one of the main cattle locations in this district, and it was appalling to see the condition of all cattle, specially the young cows and heifers which at this time of the year should have had good grazing for the past six weeks and be in fair condition.

Since the last rains in 1932, there has only been one shower and I fail to see any grass whatsoever on the plains. Cattle that were being herded on the plains were feeding on bushes and weeds, and in certain parts there were no edible weeds and bushes and the natives were seen to be cutting the branches of trees which were devoured by their stock. Most of the grass on the hill-sides had already been consumed, but I noticed a little in places which were inaccessible to stock. Sheep are also in very poor condition, but the goats appeared all to be thriving.

The mortality in the stock locations of this district have been estimated by the natives at 60 per cent, but I am inclined to think this is exaggerated and an estimate of 35 per cent would be nearer the figure.

Report dated 28th June, 1933, from the District Commissioner, South Turkana.

My general impression after a three weeks *safari*, just completed, in the Kapedde area, is that from a third to a half of cattle, sheep, goats and donkeys have died; camels have been spared to a very great extent. Some natives have lost even a larger proportion.

I would say that the rest of the district has suffered even heavier losses, all stock—except camels—are in very poor condition, and if rains do not fall soon the mortality will exceed 75 per cent to 80 per cent.

APPENDIX X—*contd.*

It is harder to say what effect the drought will have on grazing; grass roots are left in areas where grass grows, and given good rains, not too heavy but general, they will spring up again; as however most of the so-called "grazing" is shrub and bushes, with general rains it will recover.

Extract from a report dated 8th July, 1933, from the District Commissioner, North Turkana.

The drought this year is the worst within living memory of the oldest members of the tribe, and the search for grazing and water has driven the Turkana northwards and westwards, to such an extent that the southern and eastern parts of the district are to all intents and purposes depopulated.

Grazing, in the accepted sense of the word as meaning "grass" is now practically non-existent except for scattered and dried up patches . . .

What may be described as camel and goat grazing remains in a limited and much reduced quantity, and is steadily deteriorating. This consists of edible thorn, small shrubs, and scrub.

Many water-holes have dried up, and what poor grazing remains, is in certain areas, useless owing to lack of water.

Large quantities of cattle, sheep and goats, have already died from starvation . . . I should estimate (the losses) at not less than twenty per cent of the total stock owned by Turkana in this district.

RIFT VALLEY PROVINCE.

Extract from a report dated 13th June, 1933, from the Provincial Commissioner.

Baringo District (Kamasia, Njemps and Suk) is a complete desert.

The only feed is thorn threes and bushes.

The cattle mortality is very heavy, and the ground round the bomas is strewn with carcasses.

It is impossible to estimate the mortality, but it may easily reach 50 per cent.

Extract from a report dated 17th June, 1933, from the District Commissioner, Baringo.

I estimate that more than half the cattle in Baringo District have died, quite possibly more. If the drought continues probably nearly three-quarters of the cattle will die. The condition of sheep is bad, and there is a heavy mortality here also, possibly 70 per cent. Goats are standing the strains better, but here again there is considerable loss. Young stock of all kinds are dying through lack of milk.

APPENDIX X—*contd.*

NZOIA PROVINCE.

Extract from a report dated 26th June, 1933, from the Provincial Commissioner.

In the Elgeyo portion of the reserve the mortality owing to drought has been heavy. Some owners have lost up to 50 per cent of their stock; and I estimate that in the grazing area lying on the plateau between Sergoit rock and the Tambach escarpment about 15 per cent of the cattle have died.

Shortage of water rather than lack of grazing has been mainly responsible for the mortality.

There have been no losses from drought in the Cherangani area.

Rain has fallen in the Elgeyo area during the last week: and conditions there will probably improve from now onwards.

In the Nandi Reserve a belt of about six miles wide on the eastern boundary suffered from shortage of grazing for about a month, owing mainly to injudicious burning of grass. There was a slight mortality till rain fell on 24th April, since when there has been ample grazing.

Extract from a report dated 24th June, 1933, from Provincial Commissioner.

I have had replies from all District Commissioners which confirm my own opinion that no part of the province is at present overstocked and no mortality has occurred amongst cattle owing to drought.

But if the question of overstocking is leading up to that of culling I would like to state again that I consider a very large number of inferior stock should be culled and I am in favour of it being done compulsorily. We want to build up the native herds by keeping only selected animals and all "weeds" should be done away with and so leave more grazing for better beasts.

APPENDIX XI

Figures showing Results Obtainable in Bush Clearing by Organized Native Labour

(The reference is to Section 2021 of the Report.)

The undermentioned facts are of interest with regard to what could be achieved if natives were induced to turn out in large numbers in their reserves for the purpose of clearing bush for the improvement of pasture and the destruction of fly. They are based on actual results obtained in clearing land of the light thorn scrub which is typical of that which obtains in most of the semi-arid native areas.

One man (after he has had time to get accustomed to the work) can dig out 140 trees to a depth of 14 inches as his day's work, and finish by 1 p.m.

On this basis, five men would clear an acre of typical bush country in one day.

If 1,000 men were turned out daily they could clear 250 acres per diem, or a total of 50,000 acres in 250 working days. It is, of course, unlikely that results such as this would be obtained in a native reserve, where conditions as to supervision, etc., cannot be fairly compared with those obtaining on a private estate, but the figures do show what real and appreciable results should be obtained from organized effort in bush clearing.

APPENDIX XII

Details of the Figures given in the Table at Section 1966, showing Areas Included in the 1928 Sub-Committee's Definition of the European Highlands, but now Recommended to be Excluded.

1.—Kikuyu.

Item (i).—13,781 acres of forest reserve.—This figure is the sum of the items 1-6 and 10-14 of the table at Section 466.

Item (ii).—2,480 acres of mission land.—This figure is the sum of the items 15 and 16 of the table at Section 466, plus L.O. 388/1, 400 acres surrendered by the Africa Inland Mission—Section 463 (i).

Item (iii).—50 acres of township reserve.—This figure represents item 19 of the table at Section 466.

Item (iv).—1,328 acres of alienated farms.—This figure is the sum of items 7, 17, and 18 of the table at Section 466.

Item (v).—2,002 acres of unalienated Crown land.—This figure is the sum of items 8 and 9 of the table at Section 466, plus L.O. 4450, 440 acres—*see* Section 463 (i).

Note.—The Mwea area is not included in this tabulation, because it was not included in the Sub-Committee's amended definition (*see* Section 1958).

2.—Masai.

Item (i).—9,290 acres of forest reserve.—*See* Section 695. (*N.B.*—Of the area there recommended to be added to the Masai, 9,290 acres are forest reserve, the remaining 4,762 acres being unalienated Crown lands.)

Item (ii).—230 acres of alienated Crown land.—Part of Mr. Colville's farm (*see* Section 697).

Item (iii).—4,762 acres of unalienated Crown land.—*See* Section 695, and note on item (i) above.

3.—Kamba.

Item (i).—100 acres of alienated farm land.—Ngalini Farm (*see* Section 773).

Item (ii).—720 acres of unalienated Crown land.—Mwani Hill (*see* Section 775).

4.—Kerio.

Item (i).—3,850 acres of forest reserve.—*See* Section 1007 (Area D).

Item (ii).—213,518 acres of unalienated Crown land.—Churo, reckoned as 140 square miles (*see* Section 939); 100 square miles adjoining the Njemps country (*see* Sections 942 and 969); 74 square miles recommended to be evacuated by the Uasin Gishu Masai and added to the Kerio Native Reserve (*see* Section 967); 12 square miles of the Cherangani extension (*see* Section 1020); 920 acres, L.O. 1168 (*see* Section 970); 1,129 acres, Area E (Section 1007); and 2,829 acres

APPENDIX XII—*contd.*

of L.O. 1869 (Section 1009). The total of these areas is 326 square miles and 4,878 acres. In order to express the whole in acres, the 326 square miles have been taken to represent exactly 208,640 acres, although the areas are not so precisely determined that a statement in acres is, strictly speaking, admissible. After adding in the remaining 4,878 acres, the total becomes 213,518 acres.

5.—*Nandi.*

Item.—1,920 acres of unalienated Crown land.—Exclusion caused by the amendment of the Cogle Line as recommended (*see* Section 1068).

6.—*Lumbwa.*

Item.—94,960 acres of unalienated Crown land.—In Section 1176, it is recommended that Chepalungu be added to the Lumbwa Native Reserve, except for 10,000 acres, which remain in the European Highlands. At Section 1168, the total area of Chepalungu is given as approximately 164 square miles. The total of 94,960 has been obtained by multiplying 164 by 640, and deducting 10,000. It must, however, be remembered that the true area has not been precisely ascertained, and the margin of error is considerable.

7.—*Kavirondo.*

Item.—4,500 acres of unalienated Crown land.—At Section 1087 (3) it is recommended that some 40,000 acres of moorland on Mount Elgon be added to the Kavirondo Native Reserve. Of this area, some 4,500 acres are at present included in the Trans Nzoia administrative district, and so fall within the Sub-Committee's definition of the European Highlands. The recommendation would have the effect of excluding these 4,500 acres from the European Highlands.

8.—*Northern Frontier Province.*

Item.—104,000 acres of unalienated Crown land.—At Section 810 it is recommended that the Mukogodo area be detached from the Kikuyu Province and added to the Northern Frontier Province for the purpose of administration, and that it should be an area in which natives should have prior but not exclusive rights. Hence it is shown as excluded from the European Highlands.

In the above section it is stated that the determination of the area should be left to Government. In order to avoid compromising the issue, the area shown on the map for diagrammatic purposes has been drawn so as to split the difference equally between the two principal proposals, and the area in the table corresponds with the diagram. It is obvious, however, that the margin of error is very large.

APPENDIX XIII

Recommendations Involving Direct Expenditure

(Referring to section 2041 of the Report.)

1. The purchase of land.

Item (i).—At section 466 it is recommended that the following areas be purchased or acquired by exchange:—

(a) Part of L.O. 325/R, Saba-Saba, Ltd. ...	1,000 acres
(b) L.O. 295/2/R ...	80 „
(c) The eastern end of L.O. 134/4 ...	250 „
(d) Part of British East Africa Wattle Estate ...	78 „

Total ... 1,408 acres

Since the cost of acquisition would clearly form the subject of negotiation between Government and the owners, we shall refrain from setting down any figure as an estimate, for fear of prejudicing the transactions. But we take these items into account in reaching our estimate of the total cost of our recommendations, which will be found at the end of this appendix.

The same remarks apply to other items below, for which we give no separate estimate.

Item (ii).—At section 1063 a recommendation is made for a modification of the Cogle line involving the acquisition of three farms on the south-west corner of the allotment. Two of the three farms belong to one owner, who is willing to exchange them for land of equal value in the block marked Sarora, while the owner of the third farm has expressed his readiness to exchange it for unalienated Crown land in the North Nyeri District. No direct expenditure of money is involved, except possibly for incidental costs of survey.

Item (iii).—At sections 1254, 1255 it is recommended that Wundanyi Estate, 1288 acres, be purchased for addition to the Dabida native reserve, and at section 1253 it is stated that the price asked is £5,000.

2. Compensation to natives in respect of their rights under section 86 of the Crown Lands Ordinance.

At section 367 it is recommended that £2,000 should be paid in respect of compensation to Kikuyu for loss of rights to land outside the reserve.

3. Compensation to detribalized or detached natives in respect of their removal from areas in which they are at present resident.

Item (i).—At section 393, read in conjunction with section 395, it is recommended that the natives to be moved from Tigoní be compensated in a manner which would include: compensation for ordinary round hut in the form of exemption from one year's tax on the hut; cash compensation *ad valorem* for a better class hut or house; compensation for planted trees (i.e. gums and wattles) at a cash valuation:

APPENDIX XIII—*contd.*

compensation for wire fencing, if any, at a cash valuation. The number of persons living in Tigoni is stated in section 389 to be 607, according to a count made in 1932.

Item (ii).—At section 399 it is recommended that Kithirioni, an area of seventy acres, be treated in the same way as Tigoni.

Item (iii).—At section 591 (7) it is recommended that Pangani village, Nairobi, be evacuated by sections. At section 588 the number of houses is stated to be 320; at section 591 (1) the opinion is expressed that £15 may be an approximate estimate of the average value of a house, and at section 591 (ii) it is recommended that compensation should be allowed for disturbance as well as for the value of the houses.

Item (iv).—At sections 603 and 606-608 we have made alternative proposals regarding Kibira settlement, Nairobi, and have expressed the general opinion that the second of them is preferable. In reaching our total estimate of costs we have assumed that the second alternative will be adopted. This will entail compensation for 320 houses *ad valorem* and compensation for disturbance as stated in the section under reference.

Item (v).—At section 923 it is recommended that the Uasin Gishu Masai be moved to the Trans-Mara area. The incidental costs should not be large, and only a small token sum has been included in our estimate.

4. *Compensation to certain Dorobo in respect of their proposed removal.*

Item (i).—At section 375 a recommendation is made which would involve the movement of certain Dorobo living in the forests adjacent to the Kikuyu Native Reserve, mainly in the Kijabe area. It is recommended that the Administration should charge itself with the task of finding accommodation for them, and incidental monetary costs should be very small.

Item (ii).—At section 982 it is recommended that, in order to facilitate the move of the Mau Dorobo, their stock might be exchanged, through Government, for immune animals. An amount has been set down in our estimate to cover any incidental losses in connexion with this and other arrangements in connexion with moving the Mau and Tinet Dorobo.

Item (iii).—At section 1086 it is recommended that the El Gonyi be moved and that all those who have resided in the farm area continuously for a period of three years should receive compensation. The total number of El Gonyi reported to be in the farm area is about 1,900 (*see* section 1079).

5. *Compensation to the Nandi Tribe in respect of Certain Stand Premia which were waived in Kipkarren and Kaimosi.*

At Section 1067, it is recommended that compensation of £5,000 be paid.

APPENDIX XIII—*contd.**6. The Fencing of Chematum Salt-lick (see Sections 1153 and 1154).*

The length of fencing required has been estimated by the Survey Department to be about $2\frac{1}{4}$ miles of fencing (allowing for fencing round the salt-lick and both sides of the road of access). The Chief Veterinary Officer advises that the capital cost should be about £50 a mile, and the recurrent annual cost about 15 per cent of the capital cost.

7. The Upkeep of the Small Furrow to the Morania Furrow.

At Section 569, it is recommended that Government should meet the full cost of the supply-furrow to the Morania furrow, both in respect of initial cost and maintenance. A perusal of the Public Works Department files shows that in 1927 the Meru Local Native Council contributed £100 towards the costs and, according to the recommendation, there would be a liability to reimburse the Meru for this sum. It is believed that the cost of maintenance will be about £50 per annum.

8. The Leasing of Certain Farms for the Kamasia.

At Section 968, it is recommended that Government should open negotiations for leasing farms Nos. 488, 489, 490, 5249, 5276, 6262, 5461, and 493, comprising some twenty-three square miles, for a period of ten years, and allow the Kamasia to use them.

9. Rent of the King's African Rifles Lines at Meru.

This is a recurrent cost, which may perhaps be in the region of £20 per annum or thereabouts.

10. The Re-creation of the Office of Recorder of Titles.

No recommendation has been made as to the salary of the post, and the sum which we have allowed for the purposes of making an estimate is set down without any wish to prejudice the issue. It is assumed that £1,200 per annum will cover salary and other emoluments.

Total Cost.

It is estimated that the capital cost of these items would be about £36,000 (the whole ten years' rental under Head 8 being regarded as a capital charge). The recurrent annual charges are estimated at £1,300.

Cost of the Commission.

The cost of the Commission has not been included in the above figures, which deal only with the cost of the recommendations. As nearly as can be ascertained at the time of writing, the total cost of the Commission, apart from the cost of printing and publishing the Report, is £5,950.

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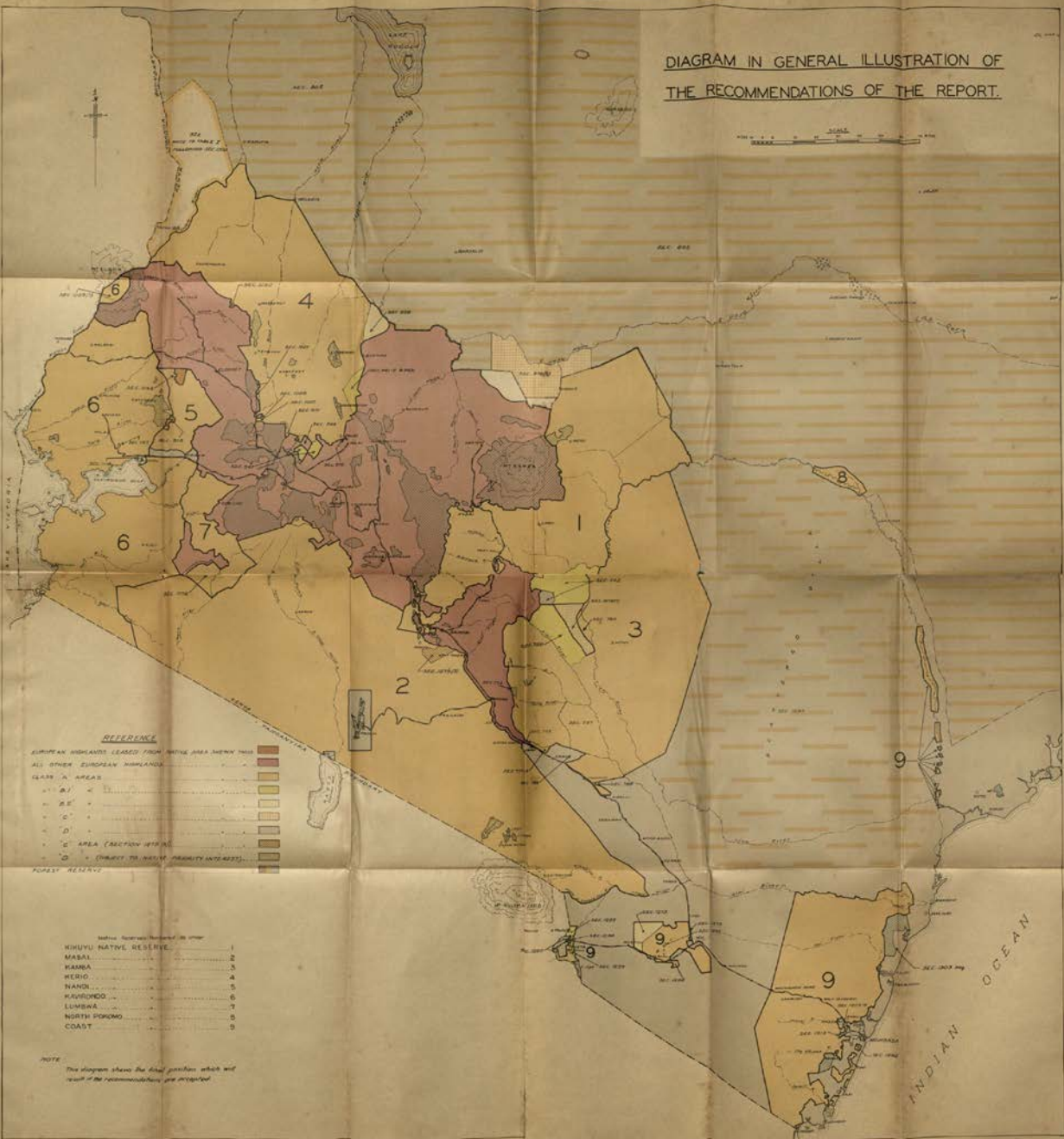




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SEPTEMBER, 1933



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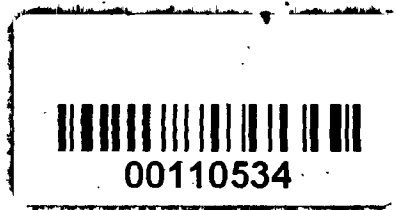
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